

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington

SUPPLEMENTARY DETERMINATION NUMBER 4 IN THE MATTER OF APPLICATION FOR THE EXEMPTION OF THE DREDGING AND EXCAVATING OF SAND AND GRAVEL FROM SURFACE OR OPEN CUTS FROM THE MAXIMUM HOURS PROVISIONS OF THE FAIR LABOR STANDARDS ACT OF 1938 PURSUANT TO SECTION 7(b)(3) OF THE ACT, PART 526, AS AMENDED, OF THE REGULATIONS ISSUED THEREUNDER, AND PARAGRAPH 8 OF THE ORIGINAL DETERMINATION MADE IN THE MATTER OF THE SAND AND GRAVEL INDUSTRY PURSUANT TO HEARING HELD JUNE, 1939

WHEREAS, the Administrator determined after a public hearing held before Harold Stein, Presiding Officer, on June 19, 1939, that:

1. There is a branch of the sand and gravel industry wherein the plants normally shut down for about 6 months each year, except for an insubstantial amount of production that may be produced shortly before or shortly after the main production season. This branch is located in the colder, and, in general, more northerly parts of the United States; and

3. The plants in the northern branch cease operation annually at a regularly recurring season of the year except for sales, maintenance, and similar work, because the materials used by the industry are not available for excavation, handling, and processing in the form in which they must be excavated, handled, and processed, i.e., as unfrozen sand and gravel, because of climatic factors; and

4. The northern branch of the sand and gravel industry is an industry of a seasonal nature within the meaning of Section 7(b)(3) of the Act and Part 526 of Regulations issued thereunder; and

WHEREAS, Paragraph (8) of the above Determination provides that it shall be without prejudice to a supplementary determination enlarging the scope of the northern branch by the inclusion therein of such plants or groups of plants, if any, as operate in the same manner and for the same reasons as the plants in the northern branch described in paragraphs 1 and 3 above; and

WHEREAS, the Kickapoo Sand and Gravel Company, Inc., of Peru, Indiana, filed an application with the Wage and Hour Division, United States Department of Labor, pursuant to Paragraph (8) of the above cited original determination in the matter of the sand and gravel industry, for a supplementary determination enlarging the scope of the northern branch of the sand and gravel industry to include the dredging and excavating of sand and gravel by the Kickapoo Sand and Gravel Company, Inc., Miami County, Indiana; and

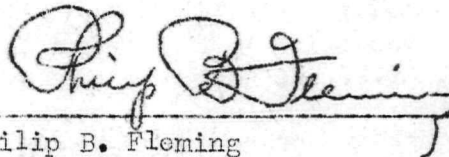
WHEREAS, it appears from the application filed by the Kickapoo Sand and Gravel Company, Inc., of Peru, Indiana, that the sand and gravel plant of the aforesaid company in Miami County, Indiana, operates in the same manner and for the same reason as the plants in the northern branch described in paragraphs 1 and 3 of the original determination; and

WHEREAS, the Administrator caused to be published in the Federal Register on October 25, 1940 (5 F.R. 4228) a notice setting forth the above matters which stated that upon consideration of the facts stated in the said application for supplementary determination the Administrator determined, pursuant to Section 526.5(b)(ii), as amended, of the Regulations, that a prima facie case had been shown for enlarging the scope of the northern branch of the sand and gravel industry in accordance with Paragraph (8) of the original determination, and pursuant to Section 7(b)(3) of the Fair Labor Standards Act of 1938, and Part 526, as amended, of the Regulations issued thereunder, to include the sand and gravel plant of the Kickapoo Sand and Gravel Company, Inc., Peru, Indiana, and which notice stated further that if no objection and request for hearing was received within 15 days the Administrator would make a finding upon the prima facie case shown on the application; and

WHEREAS, no objection and request for hearing was received by the Administrator within 15 days following publication of said notice.

NOW, THEREFORE, pursuant to Section 526.5(b)(ii) of the Regulations, as amended, the Administrator hereby finds upon the prima facie case shown in the said application that the sand and gravel plant of the Kickapoo Sand and Gravel Company, Inc., Peru, Indiana, should be and it is hereby included within the northern branch of the sand and gravel industry in accordance with Paragraph (8) of the original determination, and pursuant to Section 7(b)(3) of the Fair Labor Standards Act of 1938 and Part 526, as amended, of the Regulations issued thereunder.

Signed at Washington, D. C., this 25th day of November, 1940.



Philip B. Fleming
Administrator
Wage and Hour Division
Department of Labor

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