

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

IN THE MATTER OF APPLICATION FOR THE EXEMPTION
OF THE EXCAVATING OF PEAT MATERIALS FROM THE
MAXIMUM HOURS PROVISIONS OF THE FAIR LABOR
STANDARDS ACT OF 1938 PURSUANT TO SECTION
7(b)(3) OF THE ACT AND PART 526, AS AMENDED
OF THE REGULATIONS ISSUED THEREUNDER

WHEREAS, application was filed by the United States Peat Moss Corporation, the Hyper-Humus Company and sundry other parties, for the exemption of the excavating, mascerating, spreading, cutting, or drying of peat materials from the maximum hours provisions of the Fair Labor Standards Act of 1938, as an industry of a seasonal nature within the meaning of Section 7(b)(3) of the Act and Part 526, as amended, of the Regulations issued thereunder; and

WHEREAS, it appears that:

- (1) In the United States peat materials are produced in the more northerly and higher altitude states and in the southern states and California; and
- (2) That operations in the more northerly and higher altitude states of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Ohio, Michigan, Wisconsin, Minnesota, Illinois, Iowa, Indiana, North Dakota, South Dakota, Colorado, Utah, Nevada, Montana, Idaho, Oregon, and Washington constitute the northern branch of the peat materials producing industry and operations in all other states make up the southern branch of the industry; and
- (3) That in the northern branch peat is produced during a regularly recurring season not extending beyond the six-months period, May through October, and ceases during the remainder of the year because the peat materials are not available for extraction due to their frozen condition, to excess moisture, or to other climatic factors; and
- (4) That in the southern branch of the industry peat materials are, with perhaps occasional exceptions, produced during a season or seasons considerably longer than the maximum six-months season which obtains for the northern branch and too long in relation to the period of exemption afforded by section 7(b)(3) of the Fair Labor Standards Act to be considered an industry of a seasonal nature; and

WHEREAS, the Administrator published a preliminary determination in the Federal Register on November 5, 1940 (5 F. R. 4377), pursuant to Section 526.5 (b)(ii) of the Regulations, that a prima facie case was shown by the applications

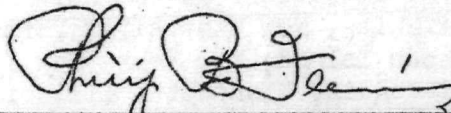
for the granting of an exemption pursuant to Section 7(b)(3) of the Fair Labor Standards Act of 1938 and Part 526, as amended, of the Regulations issued thereunder to the northern branch of the peat materials producing industry including excavating, mascerating, spreading, cutting, or drying of peat materials; and

WHEREAS, no objection and request for hearing was received by the Administrator within the fifteen days following publication of said preliminary determination;

WHEREAS, this determination shall be without prejudice to supplementary determination enlarging the scope of the northern branch by the inclusion therein of such production of peat materials, if any, as are conducted in the same manner and for the same reasons as operations in the northern branch described in paragraphs (2) and (3) above.

NOW, THEREFORE, pursuant to Section 526.5(b)(ii) of the Regulations, the Administrator hereby finds upon the prima facie case shown in the said applications that the excavating, mascerating, spreading, cutting, or drying of peat materials is a seasonal industry within the meaning of Section 7(b)(3) of the Fair Labor Standards Act of 1938 and the Regulations issued thereunder and, therefore, is entitled to the exemption provided in Section 7(b)(3) of the said Act.

Signed at Washington, D. C., this 3rd day of December, 1940.



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

Published in Federal Register, December 6, 1940.

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