

UNITED STATES DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION  
WASHINGTON

NOTICE OF OPPORTUNITY TO PETITION FOR  
REVIEW OF THE DETERMINATION IN THE MATTER  
OF THE APPLICATION FOR QUALIFICATION OF THE  
EXEMPTION THAT HAS BEEN GRANTED TO THE OPEN-  
CUT MINING OF PLACER GOLD FROM THE MAXIMUM  
HOURS PROVISIONS OF THE FAIR LABOR STANDARDS  
ACT OF 1938 AS AN INDUSTRY OF A SEASONAL  
NATURE, PURSUANT TO SECTION 7(b)(3) OF THE  
ACT AND PART 526, AS AMENDED, OF THE  
REGULATIONS ISSUED THEREUNDER

WHEREAS, after a hearing was held in Washington, D. C. June 19 and 20, 1939, before Mr. Harold Stein, a duly authorized representative of the Administrator of the Wage and Hour Division, the said Harold Stein duly issued findings and determination (4 F.R.4588), in which he found that the open-cut mining of placer gold in the States of Idaho, Montana, Nevada, Oregon, South Dakota, Utah, Washington, Wyoming, and the Territory of Alaska is a branch of an industry of a seasonal nature, within the meaning of section 7(b)(3) of the Fair Labor Standards Act of 1938, and Part 526, as amended, of the regulations issued thereunder; and

WHEREAS, no petition for review of such findings and determination having been filed with the Administrator within the fifteen days allowed under the said regulations, the exemption for the open-cut mining of placer gold in the States of Idaho, Montana, Nevada, Oregon, South Dakota, Utah, Washington, Wyoming, and the Territory of Alaska, was made effective by the Administrator on January 3, 1940, (5 F.R. 24) pursuant to section 526.7 of the regulations; and

WHEREAS, pursuant to section 526.5(c) of the regulations, the Administrator determined on April 2, 1940, (5 F.R.1284) that a prima facie case had been shown for extending the section 7(b)(3) exemption to the open-cut mining of placer gold in the State of Colorado as part of the branch of the open-cut placer gold mining industry that had been found to be of a seasonal nature; and

WHEREAS, no objection or request for hearing was received within the fifteen days allowed under the said regulations, the Administrator on April 30, 1940, (5 F.R. 1602) found on the prima facie case, pursuant to section 526.5(b)(ii) of the regulations, that the open-cut mining of placer gold in the State of Colorado is part of the branch of the open-cut placer gold mining industry that had been found to be of a seasonal nature, pursuant to section 7(b)(3) of the act, and Part 526 of the regulations issued thereunder; and

WHEREAS, applications were thereafter received from the International Union of Operating Engineers, Local No. 373, Butte, Montana; the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local No. 412 and Joint Council No. 23, Butte, Montana; and the Helena, Montana Building and Construction Trades Council, to exclude the open-cut mining of placer gold by means of power machinery from the exemption that had previously been granted; and

WHEREAS, the Administrator then gave notice of a public hearing to be held at the Finlen Hotel, Butte, Montana, on May 21, 1941, before Mr. Harold Stein, an authorized representative of the Administrator, who was authorized to take testimony, hear argument, and determine;

Whether the mining of placer gold from surface or open-cuts by means of bucket dredges, draglines, and other methods employing power machinery in the States of Colorado, Idaho, Montana, Nevada, Oregon, South Dakota, Utah, Washington, Wyoming, and the Territory of Alaska:

(1) Was properly included within the seasonal exemption granted to the placer gold mining industry in the above-defined area, and

(2) If not, whether it is a separable branch of the placer gold mining industry and of a seasonal nature within the meaning of Part 526 of the regulations: and

WHEREAS, following such hearing the said Harold Stein duly made his findings of fact and determined as follows:

1. There exist separable branches of the placer gold mining industry which are identified by the various methods used to excavate and move the gravel.
2. Placer gold mines employing power machinery to mechanically excavate and move the gravel, within the Territory of Alaska, generally cease operations completely during regularly, recurring times of the year for periods of six months or more, because, due to climatic or other natural conditions, the gravels handled by the industry are not available in the form in which they are normally handled.
3. The open-cut mining of placer gold by means of power machinery in the Territory of Alaska is a branch of an industry of a seasonal nature within the meaning of section 7(b)(3) of the Fair Labor Standards Act and Part 526, as amended, of the regulations issued thereunder, and was properly included in the exemption granted on January 3, 1940.

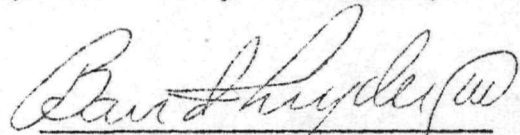
4. About ninety percent of all the placer gold produced by open-cut placer gold mines employing power machinery to excavate and move the gravel within the States of Colorado, Idaho, Montana, Nevada, Oregon, South Dakota, Utah, Washington, and Wyoming, is produced by those placer mines which, through the use of power machinery, are able to overcome climatic and other natural conditions. These mines, employing power methods, generally operate in excess of six months during each calendar year and maintain an operating season which has no reasonable relation to the fourteen week exemption provided in section 7(b)(3) of the Fair Labor Standards Act.

5. The open-cut mining of placer gold by means of power machinery within the States of Colorado, Idaho, Montana, Nevada, Oregon, South Dakota, Utah, Washington and Wyoming is a branch of an industry, but is not of a seasonal nature within the meaning of section 7(b)(3) of the Fair Labor Standards Act and Part 526, as amended, of the regulations issued thereunder, and should not have been included in the seasonal exemption granted to the open-cut mining of placer gold in the above-mentioned states.

WHEREAS, said findings and determination were duly filed with the Administrator on December 8, 1941, and are now on file in Room 5418, Department of Labor Building, Washington, D. C., and are available for examination by all interested parties:

NOW, THEREFORE, pursuant to the provisions of section 526.7 of the aforesaid regulations, notice is hereby given that any person aggrieved by the said determination may, within fifteen days after the date that this notice appears in the Federal Register, file a petition with the Administrator requesting that he review the action of the said representative upon the record of hearing held before the said representative.

Signed at Washington, D. C., this 5th day of December, 1941.



Baird Snyder  
Acting Administrator  
Wage and Hour Division  
United States Department of Labor