

UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
NEW YORK, NEW YORK

IN THE MATTER OF APPLICATION FOR MODIFICATION 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, 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 had 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 in Butte, Montana, on May 21, 1941, before Mr. Harold Stein, 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.

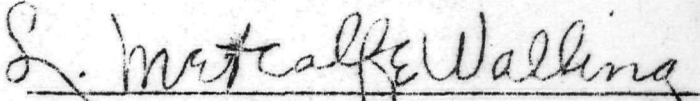
WHEREAS, said findings and determination were duly filed with the Administrator on December 8, 1941; and are now on file in Room 1618, Wage and Hour Division, Department of Labor, 165 West 46th Street, New York, New York, and are available for examination by all interested parties; and

WHEREAS, on December 30, 1941, the Administrator caused to be published in the Federal Register a notice which stated that, pursuant to the provisions of section 526.7 of the aforesaid regulations, any person aggrieved by the said determination might within fifteen days after December 30, 1941, file a petition with the Administrator requesting that he review the action of the said representative upon the record of hearing before the said representative; and

WHEREAS, no petition for review has been filed within the said fifteen days;

NOW, THEREFORE, pursuant to the provisions of section 526.7 of the said regulations, the modification of the seasonal exemption for the open-cut mining of placer gold will become effective on the date this notice appears in the Federal Register. The said seasonal exemption, provided by section 7(b)(3) of the Fair Labor Standards Act of 1938, is applicable only as specified by the determinations that became effective on January 3, 1940, and on April 30, 1940, and as modified by the aforesaid determination that will become effective upon the publication of this notice in the Federal Register.

Signed at New York, New York, this 28th day of April, 1942.


L. Metcalfe Walling, Administrator
Wage and Hour Division
U. S. Department of Labor

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