

Regulations

Applicable to Industries of a Seasonal Nature

TITLE 29, CHAPTER V
CODE OF FEDERAL REGULATIONS

Part 526

The Fair Labor Standards Act of 1938

**Regulations Applicable to
Industries of a Seasonal Nature**

Pursuant to Section 7 (b) (3)
of the Fair Labor Standards Act of 1938

(52 Stat. 1060)

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UNITED STATES DEPARTMENT OF LABOR

WAGE AND HOUR DIVISION

Section 228.2—Meaning of "Industry"
"Industry" means any branch, thereof,
or group of industries in which individuals are gainfully employed.

Issued under the authority contained in sec. 7 (b) (3), 52 Stat. 1060.

Part 526—

Regulations

Applicable to Industries of a Seasonal Nature

Pursuant to Section 7 (b) (3) of

The Fair Labor Standards Act of 1938¹

Section 526.1.—Statutory provisions.

“Section 7: (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than 44 hours during the first year from the effective date of this section,

(2) for a workweek longer than 42 hours during the second year from such date, or

(3) for a workweek longer than 40 hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

* * * * *

(3) for a period or periods of not more than 14 workweeks in the aggregate in any calendar year in an industry found by the Administrator to be of a seasonal nature, and if such employee receives compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.”

Section 526.2.—Meaning of “Industry”.

“Industry” means a trade, business, industry, or branch thereof, or group of industries in which individuals are gainfully employed.

¹ Issued under the authority contained in sec. 7 (b) (3), 52 Stat. 1060.

Section 526.3.—Industry to which the exemption is applicable.

The exemption for an industry of a seasonal nature is applicable to an industry which both:

(a) Engages in the handling, extracting or processing of materials during a season or seasons occurring in a regularly, annually recurring part or parts of the year; and

(b) ceases production, apart from work such as maintenance, repair, clerical and sales work, in the remainder of the year because of the fact that, owing to climate or other natural conditions, the materials handled, extracted, or processed, in the form in which such materials are handled, extracted or processed, are not available in the remainder of the year.

Section 526.4.—Application for exemption.

Any industry, or employer, or employer group therein, may make written application to the Administrator for exemption. The application shall state the facts and reasons relied upon to show that the employer or employer group making application is a part or the whole of an industry which meets the conditions set forth in section 526.3. Preferential consideration will be given to applications filed by groups or organizations which are deemed to be representative of the interests of a whole industry or branch thereof.

Section 526.5.—Procedure upon application for exemption.

Upon consideration of the facts and reasons stated in an application, the Administrator may—

(a) without further proceedings deny the application on the ground that it fails to allege facts entitling the industry to an exemption as a seasonal industry; or

(b) may set the application for hearing before the Administrator or his authorized representative; or

(c) may notify the applicant of, and publish in the Federal Register and by general press release, a preliminary determination that a *prima facie* case for the granting of an exemption has been shown. In the event that the Administrator determines that a *prima facie* case for exemption has been shown, the Administrator for 15 days following the publication of his preliminary determination will receive objection to the granting of the exemption and request for hearing from any person interested, including but not limited to employees, employee groups, and employee labor organizations, within the industry claimed to be exempt. Upon receipt of objection and request for hearing, the Administrator will set the application for hearing before the Administrator or an authorized representative.

If no objection and request for hearing is received within 15 days, the Administrator will make a finding upon the prima facie case shown upon the application. The exemption shall become effective upon publication of the finding in the Federal Register.

Section 526.6.—Procedure where application for exemption set for hearing.

(a) One combined hearing may be held on two or more applications presenting related issues of fact or law.

(b) A notice of the time, place, and scope of a hearing upon an application will be published in the Federal Register and made public by a general press release at least 5 days before the date of such hearing.

(c) All persons interested, including employees, employee groups, employee labor organizations, employers, employer groups, and trade associations, within the industry affected, and designated subordinates of the Administrator, will be afforded an opportunity to present evidence and to be heard.

(d) The Administrator or his authorized representative may cause to be brought before him at such hearing any witness whose testimony he deems material to the matters in issue.

(e) The Administrator or his authorized representative, as the case may be, will make his finding upon the record made at the hearing. If the finding, made by the Administrator himself, is that the industry in question is of a seasonal nature within the meaning of section 526.3, the exemption shall become effective upon publication of the finding in the Federal Register. If the finding is by an authorized representative of the Administrator, the further procedure set forth in section 526.7 is applicable.

Section 526.7.—Petition for review of finding by authorized representative.

Where hearing is had before an authorized representative of the Administrator, any person aggrieved by the finding of such representative may within 15 days after the action of such representative file a petition with the Administrator requesting a review by the Administrator of the action of the representative upon the record of hearing before the representative. If the request for review is granted, all interested parties will be afforded an opportunity to be heard either in support of, or in opposition to, the matters prayed for in the petition. A notice of the time and place and scope of the hearing will be published in the Federal Register and made public by a general press release at least 5 days before the date of such hearing.

If no such petition for review is filed within 15 days, or if such petition is filed and subsequently is denied by the Administrator, the finding of the authorized representative shall become final. If such finding is that the industry in question is of a seasonal nature within the meaning of section 526.3, the exemption shall become effective upon publication of the finding in the Federal Register.

If a petition for review is granted and upon hearing the Administrator confirms a finding by the representative that the industry is of a seasonal nature within the meaning of section 526.3, or if the Administrator, rejecting a finding by the representative to the contrary, finds on the record that the industry is of a seasonal nature within the meaning of section 526.3, then the exemption shall become effective upon publication of the Administrator's finding in the Federal Register.

Section 526.90.—Temporary Regulation of Administrator relating to exemptions for industries of a seasonal nature under section 7 (b) (3) of the Fair Labor Standards Act.

(a) Subject to objection by any person interested as hereinafter provided in paragraph (d), the Administrator (without prejudice to the possible subsequent inclusion of other industries as of a seasonal nature within the meaning of sec. 526.3) temporarily until December 31, 1938, finds the following industries to be of a seasonal nature:

Industries which both:

(1) Engage in the handling, extracting, or processing of materials during a season or seasons occurring in regularly, annually recurring part or parts of the year; and cease production, apart from the work of maintenance, repair, and clerical employees, in the remainder of the year because of the fact that, owing to climate or other natural conditions, the materials handled, extracted, or processed in the form in which such materials are handled, extracted, or processed, are not available in the remainder of the year; and which

(2) Produce 50 percent or more of their annual output in a period or periods amounting in the aggregate to not more than 14 workweeks.

(b) Such industries may, until December 31, 1938, for a period or periods of not more than 14 workweeks in the aggregate, employ employees 12 hours in any workday and 56 hours in any workweek without payment of time and one-half; provided, however, that such employees receive compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which they are employed. Industries seeking exemption beyond December 31, 1938 must make application pursuant to section 526.4.

(c) Any employer, group of employers, or trade association representing employers, who are not a part or the whole of an industry within the terms of paragraph (a) because 50 percent or more of the annual output is not produced within a period or periods of 14 workweeks, or who are in doubt as to whether they are a part or the whole of such industry, should make application to the Administrator for exemption in accordance with the Administrator's regulations sections 526.1-526.7.

(d) Any employee, or group of employees, who are employed by an employer or employers claiming to be a part or the whole of an industry within the terms of paragraph (a) of this section, or any employee labor organization representing such employees, or any other person interested, may make written objection to the Administrator and request a hearing on the ground that such employer or employers are not entitled to exemption as a part or the whole of an industry of a seasonal nature.

If objection and request for hearing is received, the Administrator or his authorized representative will hold a hearing and any further proceedings in accordance with the procedure set forth in sections 526.6-526.7.

The finding of the Administrator or his authorized representative following such procedure shall be published in the same manner and have the same force and effect as if the hearing had been had upon application for exemption under section 526.4, and the exemption upon a finding of an industry of a seasonal nature shall become effective in accordance with the provisions of sections 526.6-526.7; provided, however, that if the industry is within the terms of paragraph (a) of this section, the finding of the Administrator or his authorized representative shall so state, and the exemption upon such finding shall be effective as of October 24, 1938.

Approved by the Administrator, October 20, 1938.
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WAGE AND HOUR DIVISION

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