

FLSA-1141

July 31, 1975

This is in reply to your letter of May 15, 1975, asking whether the provisions of section 7(m) of the Fair Labor Standards Act would apply to employees in the ***.

You state that employees at this plant receive green leaf tobacco from various tobacco auction warehouses and in the receiving department the tobacco is separated according to grades and then moved into the green leaf storage area. The tobacco remains in the green leaf storage area from two to four weeks. It is then removed to the blending room where it is placed on conveyor belts for tips to be cut, picked and stripped by employees on the assembly line. The tobacco is then placed on a belt to be weighed after which it is redried in machines. The tobacco is placed in containers, weighed again and prepared for shipment to cigarette manufacturers.

Section 7(m) of the Act provides a partial exemption from the Act's overtime pay standards for employees in the named operations who would otherwise be exempt under section 7(c). The 1974 amendments to the Act phased out the partial exemption from the overtime pay requirements provided by section 7(c) by reducing the number of workweeks section 7(c) may be taken each calendar year and repealing section 7(c) as of December 31, 1976. The green leaf tobacco industry has been subject to the provisions of section 7(c), as noted in 29 CFR 526.10(b)(32).

Section 7(m) has the effect of continuing the partial overtime pay exemption available to the green leaf tobacco industry. As stated on page 63 of Senate Report 93-690, "A limited overtime exemption (14 weeks, 10 hours per day, and 48 hours per week) is provided for certain employees engaged in activities related to the sale of tobacco. These employees are currently covered by the section 7(c) exemption pursuant to determination by the Secretary of Labor.

As defined in section 7(m), the green leaf tobacco industry includes the same operations as are included under section 7(c) for cigarette types of tobacco, namely, buying, handling, stemming and redrying of green leaf tobacco of the types enumerated and the packing and storing of such tobacco. Employees exempt under this section include both those employed to provide service (including stripping and grading) necessary and incidental to the sale at auction of the enumerated types of green leaf tobacco, and those in auction sale, buying, handling, stemming redrying, packing and storing of such tobacco.

It is our opinion that the employees engaged in the operations described in your letter are subject to the limited overtime pay exemption provided in section 7(m) of the Act since they are performing operations specifically named in section 7(m) or in operations that are necessary and incidental thereto.

Sincerely,

Donald Essig
Assistant to Administrator
Wage and Hour Division

Warren D. Landis
Acting Administrator
Wage and Hour Division