

FLSA-1067

April 5, 1978

This is in reply to your letters of October 13th and 17th, 1977, regarding the application of the Fair Labor Standards Act to the raising of poultry and the production and processing of eggs.

Based on the information contained in your letters and additional information obtained by staff member *** during a telephone conversation with you on October 25th, the organizational structure which conducts the above activities is this:

Three brothers own three farms which, for purposes of this reply, are designated as farms "A", "B" and "C." The brothers lease the farms to a corporation which they, the three brothers, control through ownership of 75% or more of the stock of the corporation. The corporation, which is here designated as corporation "X", owns five or six subsidiary companies. All corporations are involved solely in some form of activity related to the procurement of chickens, their feeding and maintenance, and the production, processing, and selling of eggs as well as the disposal of the egg laying flock to provide room for replacement chickens having a better egg production capacity based on the egg laying cycle.

As you know, under Section 13(a)(6) of the Act, an employee employed in agriculture is exempt from the minimum wage and overtime requirements if he or she is employed by an employer who did not, during any calendar quarter of the preceding calendar year, use more than 500 man-days of agriculture labor. In this connection, see Section 780.305 of 29 CFR Part 780, copy enclosed for an explanation of the 500 man-day provision. Section 13(b)(12) of the Act provides a complete exemption from the overtime pay requirements of the Act for any employee employed in agriculture which is defined in Section 3(f) of the Act. A corporation may be engaged in farming activities to the same extent as an individual, as explained in Section 780.304.

On the basis of all the above, your questions are answered in the same order as presented, as follows:

Question. Assuming some of the eggs produced on Farm A are transferred to Farm B, processed at Farm B, and are consolidated with the eggs produced at Farm B, will the operations of Farm B continue to be treated as part of the integrated farming operation and as such be exempt from the wage and hours provisions of the Fair Standards Act as agricultural workers?

Answer. Yes. Farm A and Farm B are owned and/or controlled by the same corporation and constitute one farm for purposes of the Act. However, it would appear from the size of the farm operations that the man-day test has been exceeded and the employees would not be exempt under Section 13(a)(6).

Question. In order to meet market demands, your client sets up a separate egg processing facility in the same geographical area as its farms and eggs from independent producers are processed in that facility and shipped to customers. Will the employees engaged in handling the eggs at the processing facility be treated as part of an integrated farming operation and, as such, exempt from the provisions of the Fair Labor Standards Act?

Answer. No. The employees would not be engaged in "agriculture" as that term is defined in Section 3(f) of the Act. As the Supreme Court made clear in Bayside Enterprises, Inc., v. National Labor Relations Board, 429 U.S. 298 (1977), employees of a processor whose agricultural commodities are produced by other farmers are not engaged in "agriculture" under Section 3(f). (The term "agricultural labor" in Section 2(3) of the National Labor Relations Act, which was at issue in that case, has the same meaning as "agriculture" in Section 3(f) of the Fair Labor Standards Act.) In other words, the egg processing employees are not farmers, nor is their work performed on a farm as an incident to that farmer's farming operations. In this connection, see also Section 780.137 of Part 780.

Your third question is essentially the same as your second question. When the three leased farms, owned by the three brothers and leased to their own corporation, cease egg production for a period of time (there being no chickens on the farms since the flocks have been removed for cleaning the premises and preparing for the new flocks) and would engage in processing eggs, some of which are produced and bought from independent farmers, the employees would not be engaged in processing only eggs produced on the same farm as the processing facilities. In such a situation, the employees would be entitled to receive the applicable minimum wage rate and overtime pay required by the Act for the same reasons given in answer to the second question.

If you should wish further information concerning the application of the Act to agricultural activities, you may wish to contact our Regional Office which is located at . The people there will be pleased to assist you in any way they can.

Sincerely,

Lamar Johnson
Acting Deputy Administrator
Wage and Hour Division

Xavier M. Vela
Administrator

Enclosure