

FLSA-941

August 24, 1978

This is in reply to your letter of July 21, 1978, requesting an opinion concerning the applicability of Section 13(b)(12) of the Fair Labor Standards Act to certain employees employed by a farming corporation engaged in raising chickens that are ultimately processed or sold for breeder stock.

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 agricultural labor. In this connection, see Section 780.305 of the enclosed copy of 29 CFR Part 780 for an explanation of the 500 man-day provision. Section 13(b)(12) of the Act provides a complete exemption from overtime pay requirements of the Act for any employee employed in agriculture which is defined in Section 3(f) of the Act.

Agriculture as defined in the Act includes the raising of poultry or the production of eggs and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

In the situation you describe, where the farming operation consists solely in producing eggs for hatching, performing the hatching operations, raising and selling the chickens, all of the employees, including the office and maintenance workers, are considered to be employed in agriculture. Also, activities such as the grading and packing of culled eggs and chickens performed by the farming operation's hatchery employees in connection with the breeding of poultry by the hatchery and the delivery to processor are considered agricultural operations.

The truck drivers described in your letter as employees (a) and (b) would qualify for the overtime exemption of Section 13(b)(12) since they are performing work for a farmer as an incident to the farming operations (see Section 780.153 through 780.155 of 29 CFR Part 780). The laboratory employees (employees (c)) would be exempt in any workweek in which their activities are confined to work pertaining solely to their employer's own farming activities. Employees (d) who move, select, grade, vaccinate and debeak chickens qualify for the overtime exemption as explained in Section 780.151(k). Finally, the carpenters (employees (e)) qualify for the overtime exemption when they perform carpentry work on farm buildings if their work is part of the agricultural activity and is subordinate to the farming operations on such farm (Section 780.158(a)).

If you have any further questions, please contact this office at any time.

Sincerely,

Xavier M. Vela
Administrator

Enclosure