

FLSA-1068

November 28, 1978

This is in reply to your letter of October 13, 1978, requesting an opinion concerning the application of the Fair Labor Standards Act to truck drivers who transport live chickens interstate for a diversified commercial farm. While your letter does not contain sufficient information for us to give a definitive reply, the following should be helpful to you.

Under Section 13(a)(6) of the Act, an employee employed in agriculture (as defined in Section 3(f) of the Act) is exempt from the minimum wage and overtime requirements if he or she is employed by an employer who did not, during the calendar quarter of the preceding calendar year, use more than 500 man-days of agricultural labor. See Sections 780.302 through 780.305 of the enclosed copy of 29 CFR Part 780 for an explanation of the 500 man-day provision. Furthermore, 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.

Employment in "secondary" agriculture under Section 3(f) of the Act includes employment in "delivery to storage or to market or to carriers for transportation to market" when performed by a farmer as an incident to or in conjunction with the farmer's own farming operations. Where such deliveries require travel off the farm, only employees of a farmer engaged in making the deliveries can come within Section 3(f). However, such employees would not be considered to be engaged in agriculture in any workweek when they delivered commodities of other farmers, because such deliveries would not be performed as an incident to or in conjunction with such farming operations. For a discussion of this matter, see Sections 780.152 through 780.157 of Part 780. Your attention is also directed to Sections 780.126 and 780.128 through 780.132.

It should also be noted that Section 13(b)(1) of the Act provides an overtime pay exemption for drivers, drivers' helpers, loaders and mechanics of certain transportation firms engaged in interstate commerce.

If you have any further questions, you may wish to contact our Wage and Hour Area Office at Room 417, 951 Government Street Building, Mobile, Alabama 36604 (telephone: (205) 690-2311). The people in that office will be pleased to assist you in any way possible.

Sincerely,

Herbert J. Cohen
Assistant Administrator

Enclosure