

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington

INTERPRETATIVE BULLETIN

NO. 10

FARMERS' COOPERATIVE ASSOCIATIONS
UNDER THE FAIR LABOR STANDARDS ACT OF 1938

(1) Employees of cooperative associations, the members or stockholders of which are farmers, are granted no express exemption from the provisions of the Fair Labor Standards Act. Section 13(a)(6), however, exempts from both the wage and hour provisions of the Act any employee employed in "agriculture", which is defined in Section 3(f) as including "farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals or poultry, and any practices (including any forestry or lumbering operations) 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." This bulletin will address itself to the question which has been raised most often by the inquiries received from farmers' cooperative associations: are the employees employed by such associations, solely because of that fact, engaged in " . . . practices (including any forestry or lumbering operations) performed by a farmer . . . as an incident to or in conjunction with" farming operations and therefore exempt? In other words, is a farmers' cooperative a "farmer" within the meaning of Section 3(f)? This bulletin is merely intended to indicate the construction of the Act on this question which will guide the Administrator in the performance of his administrative

duties.

(2) The phrase "by a farmer" was intended to cover practices performed either by the farmer himself or by the farmer through his employees. Employees of a farmers' cooperative, however, are employed not by the individual farmers who compose its membership or who are its stockholders, but by the cooperative association itself. Cooperative associations, whether in the corporate form or not, are distinct, separate entities from the farmers who own or compose them. The work performed by a farmers' cooperative association is not work performed by a farmer but for farmers. The legislative history of the Act supports this interpretation. Statutes usually exempt farmers' cooperative associations in express terms if an exemption is intended. The omission of an express exemption from the Fair Labor Standards Act is significant since many unsuccessful attempts were made on the floor of Congress to secure special treatment for such cooperatives. Employees of a farmers' cooperative association, therefore, in our opinion, are not engaged in "any practices . . . performed by a farmer . . ." within the meaning of Section 3(f) and are not exempt on the basis of this part of the definition of "agriculture" from the wage and hour provisions of the Act.

(3) This does not mean that all employees of farmers' cooperative associations are subject to the provisions of the Act. If, for example, they, like the employees of any other employer, are engaged in any of the operations or practices set forth in Sections 3(f), 7(c) or 13(a)(10), the exemptions provided in these sections apply. See, for example, Interpretative Bulletin No. 7 dealing with forestry or lumbering operations. An interpretative bulletin dealing with these various agricultural exemptions will be issued as soon as possible. Moreover, to be subject to the provisions of the Act, employees of farmers' cooperative associations like other employees, must be engaged in interstate commerce or in the production of goods for interstate commerce. See Interpretative Bulletins Nos. 1 and 5.