

FLSA-1145

October 31, 1974

This is in reply to your letter of September 3, 1974, concerning the applicability to livestock brand inspectors of the overtime exemption for agricultural employees provided by the Fair Labor Standards Act. We regret that the flood of correspondence in connection with recent amendments to the Act did not enable us to reply sooner.

It is our understanding that livestock brand inspectors are generally employees of government, and that they perform their services at any place where there is a sale of cattle. Such sales may take place on the range, at feed lots, or at such places as livestock markets, stockyards and meat packing plants.

"Agriculture" is defined in the Act to include such primary operations as the cultivation and harvesting of agricultural commodities and the raising of livestock. It also includes secondary operations performed by a farmer or on a farm as an incident to such farming operations. This is explained in Subpart B of Interpretative Bulletin, Part 780 (copy enclosed). See in particular Section 780.121.

It is clear that brand inspectors are not engaged in the primary agricultural activity of raising livestock, such as breeding, feeding and general care of livestock. It is also clear that their activities do not come within the scope of that part of the definition of agriculture relating to secondary agriculture. They are not employed by a farmer, nor on a farm, while performing brand inspection duties, even though their services may benefit farmers. Thus, there is no basis in the Act for treatment of the brand inspectors as agricultural employees.

Sincerely,

Betty Southard Murphy
Administrator
Wage and Hour Division

Enclosure