

## **FLSA-1082**

October 22, 1982

Thank you for your letter asking on behalf of one of your clients, whether his/her employees are exempt from overtime compensation pursuant to Section 13(b)(12) of the Fair Labor Standards Act (FLSA).

You state your client employs 19 employees and is engaged in the business of breeding dairy and beef cattle for dairy and beef farms located throughout the Northeast United States. The cattle are bred using a process known as embryo transfer. Embryo transfer consists of taking fertilized ova from a cow and transferring them into the uteri of heifers. These heifers carry the embryo through gestation. The goal of embryo transfer is to produce offspring which are the product of mating a valuable cow and bull without having the cow actually carry and calve the offspring.

You state your client primarily conducts this business on a 100 acre leased farm. On the leased farm is a barn, feed lot, pasture, laboratory and office. All but one of the cows on the leased farm during 1981 were owned by clients of your client. Approximately two-thirds of the heifers were implanted on your client's leased farm, the remainder were implanted on his/her clients farm. Approximately 63 percent of the recipient heifers were owned by your client and the remainder were owned by his/her clients.

When the embryo transfer is performed on your client's premises, it generally takes between four to five months for the entire process to be completed. The process begins when prospective heifers are purchased and taken to one of two quarantine lots, where they are held for about four weeks. These quarantine lots are separately owned and operated businesses. However, your client's employees have access and visit the lots daily to administer drugs and check whether the heifers are in heat. At any given time, there are between 100 to 200 heifers quarantined at these lots.

After it has been discovered that a heifer is in heat, the animal is transferred to your client's leased farm, where it is implanted with an embryo. Generally, there are between 150 to 200 recipient heifers, and between 60 to 70 donor cows on your client's leased farm. The animals are sheltered, treated, fed and cared for exclusively by employees of your client. The average length that donor cows are on your clients leased farm is usually one year. The recipient heifers, on the other hand, stay on the leased farm for an average of three weeks. After being implanted, the heifer is taken to a large independently owned and operated feed lot where it is held for between 60 to 90 days. Generally, about 500 of your client's implanted heifers are held at the feed lot. While feed lot employees feed and care for the animals, your client's employees visit the feed lot at least weekly to examine the heifers.

About 60 days after a heifer is implanted with an embryo, it is palpated for pregnancy. If pregnant, the implanted heifer is usually released to one of your client's clients within 30 days. If his/her client for financial reasons or otherwise is unable to claim the heifer, the

animal is transferred to another independently owned and operated lot until that heifer is ready to calve. There are between 60 to 90 such heifers held on that property. After the calf is delivered, it is kept on your client's leased farm where it is fed, treated and cared for exclusively by employees of your client for an average of two months until it can be sold. Generally, there are between 15 to 20 calves on your client's leased farm at all times.

Your client employs between three to five farm crew members including a farm crew leader. They spend 95 percent of their workweek on the leased farm, caring for donor cows, recipient heifers and calves. Their duties include daily herding, sorting and feeding the animals cleaning the feed lot and bedding areas, and general maintenance of the fences, cattle chute pens, loading dock, tractors and farm implements of your client. They also occasionally visit the quarantine lots to administer heat checks.

In addition, your client employs between three to four laboratory technicians who spend about 75 percent of their workweek on the leased farm performing the following duties: Assisting a staff veterinarian in the superovulation, insemination and flushing of donor cows; evaluating and manipulating flushed embryos in preparation for the embryo transfer procedure; cleaning and making ready all the equipment used in the transfer, preparing the heifers for transfer by clipping, scrubbing, and assisting the veterinarian in the administration of a local anesthetic; handling the recipient heifer during the transfer procedure, and assisting the veterinarian in suturing the incision after the procedure is completed. The remainder of these employees' time is spent at dairy or beef farms of your client's clients, either assisting in the flushing of donor cows or the implantation of embryos into recipient heifers.

Further, your client employs between one to two animal technicians who spend approximately 90 percent of their time on the leased farm performing the following tasks: heat checking, vaccinating and administering drug treatments to the cattle, ordering the drugs, equipment and other material used in the treatment and general care of the animals; assisting the farm crew members in their daily tasks and assisting the laboratory technicians in the preparation of the heifers for surgery, including cleaning and maintaining the surgical area. The remainder of their time is spent at the quarantine lots or holding feed lots caring for the recipient heifers. The duties at the former include heat checking and drug administration. Their duty at the latter is assisting in the palpation of heifers to determine pregnancy.

Your client also employs a bookkeeper, a secretary, and on occasion, a mechanic/maintenance man. The bookkeeper performs such bookkeeping practices as are customarily associated with bookkeeping for your client. The secretary performs general secretarial work for your client. The mechanic/maintenance man, when employed, maintains and repairs machinery and equipment used in your client's business.

On the basis of the above information you ask whether your client's employees are exempt from overtime premium pay pursuant to Section 13(b)(12) of the FLSA.

After a thorough review of the information you presented concerning your client's operation and the duties performed by his/her employees, we are of the opinion that the practices there performed are within the meaning of Section 3(f) of the FLSA. Accordingly, the employees when exclusively engaged in such activities during a workweek are exempt from overtime premium pay pursuant to Section 13(b)(12) of the FLSA.

Sincerely,

William M. Otter  
Administrator