

FLSA-1078

December 20, 1982

This is in response to your letter of November 26, 1982, regarding the application of the Fair Labor Standards Act to your family's fruit and vegetable farm.

You state that in addition to tilling, cultivating, and harvesting fruit and vegetables, the farm operates a retail farm market. The retail operation sells products grown on the farm, and bananas, grapes, dried flowers, etc., which are not raised on the farm. You state the annual dollar volume of business is more than 362,500. You also state that the farm has used more than 500 man-days of agriculture labor in at least one calendar quarter of the preceding calendar year.

Section 3(f) of the Act defines the term agriculture to include 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, the raising of livestock, beast, fur-bearing animals, or poultry, 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.

Since you are concerned with the application of Sections 3(f) and 13(b)(12) of the Act to four distinct group of employees, we will address each one separately.

The first group of employees is exclusively engaged in tilling, cultivating and harvesting products grown on the farm. In addition, they repair farm machinery and equipment owned by and used on the farm.

Based on the information provided, this group of employees is performing agricultural activities and thus would qualify for the overtime pay exemption provided by section 13(b)(12).

The second group of employees worked exclusively in the farm market. They unpack, stock, trim and sort vegetables, fruits, nuts, cherries, etc. and operate the cash registers. A portion of the products they handle are grown on the farm and the remainder is purchased elsewhere.

As explained in Section 788.141 of 29 CFR Part 730, copy enclosed, practices performed on a farm must be performed as an incident to or in conjunction with such farming operations in order to constitute agriculture within the secondary meaning of the term. No practice performed with respect to farm commodities is within the meaning of section 3(f) by reason of its performance on a farm unless all of such commodities are the products of that farm. Thus, since the second group handles commodities which are not products of your farm, they would not qualify for the overtime exemption provided by section 13(b)(12).

The third group of employees work in the same building that the retail farm market occupies. This group sorts, grades, and cleans products grown only on the farm and sold in the retail market. On occasion, a few members of this group handle, in the same manner, peaches, corn, apples, etc., not grown on your farm, but which were purchased on an emergency situation.

As explained above, for such activities to be considered agricultural within the meaning of section 3(f), all such commodities must be the products of the farm. As explained in Section 780.10 of Part 780, the workweek is the unit of time to be taken as the standard in determining the applicability of an exemption. Thus, the overtime exemption provided by section 13(b)(12) would be lost with respect to the third group of employees in the workweeks they handled products not grown on the farm. However, for those workweeks when the only products handled by the employees were those which had been grown on the farm the exemption could be claimed. In addition, only those employees who had actually handled the nonfarm products would lose the overtime exemption.

The fourth group is composed of a few members from the first group who on occasion may be called from their field work to help out in the market.

We believe our responses above provide sufficient information to enable you to determine whether they would continue to qualify for the overtime pay exemption.

Finally, you ask whether it is necessary to maintain separate records, or identify each group of employees on the payroll.

It is not necessary to maintain separate records or identify each group on the payroll. However, you should distinguish the workweeks employees are due overtime compensation from those workweeks when they qualify for the overtime pay exemption.

We trust the above is responsive to your inquiry.

If you have any further questions, do not hesitate to let us know.

Sincerely,

William M. Otter
Administrator

Enclosure