

**FLSA-982**

January 26, 1983

This is in reply to your letter of January 13, 1983, concerning the application of the overtime pay provisions of the Fair Labor Standards Act (FLSA) to an employee of a seafood processing plant.

The employee in question operates and maintains a grinding mill which is used to grind up crab shells, a by-product of the seafood processing operation. This by-product is sold to a processor in another state who utilizes the shell material in producing chicken meal. The chicken meal processor utilizes a contract carrier to pick up the by-product at your client's establishment and transport the material to its processing plant.

Your client's employee spends most of his workday operating the grinding mill, and storing the ground shell. When the truck of the contract carrier utilized by the chicken meal processor arrives at your client's establishment, the employee in question operates automatic loading equipment to load the ground crab shell material. The employee is responsible for seeing that appropriate volumes of shell are placed in various sections of the truck to assure a balanced load and compliance with State weight restrictions and safety inspections. You ask whether this employee is exempt from overtime as a loader of trucks traveling in interstate commerce.

Section 13((b)(1) of the FLSA provides an overtime pay exemption for any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act (MCA) of 1935. This has been interpreted as applying to any driver, driver's helper, loader, or mechanic employed by a carrier, and whose duties affect the safety of operation of a motor vehicle engaged in transportation on public highways in interstate or foreign commerce, as outlined in Regulations, 29 CFR Part 782 (copy enclosed).

As indicated in section 782.2, the power of the Secretary of Transportation extends to those classes of employees and those only who are employed by carriers whose transportation of passengers or property is subject to the Secretary's jurisdiction under section 204 of the MCA. The exemption does not apply to employees of noncarriers. See section 782.2(d). Since your client is not the carrier of the shell by-product, the exemption under section 13(b)(1) is not applicable to the employee in question.

You also asked whether any "agricultural" exemption may exempt this employee from the overtime pay provisions of the FLSA. Based upon the information you present, none of the agriculture related exemptions in the FLSA would have application to the employee in question.

We trust the above satisfactorily responds to your inquiry. Please let us know if you have further questions.

Sincerely,

William M. Otter  
Administrator

Enclosure