

## FLSA-1079

August 30, 1983

Your letter asking whether employees of your onion growing operations are exempt from the overtime premium pay requirements pursuant to Section 13(b)(12) of the Fair Labor Standards Act (FLSA) (copy enclosed), has been referred to this office for response.

Your state that employees of your company plant onion seed during December of each year on your farm in \*\*\*. Before the seed is planted, the soil is fumigated to make it disease resistant. Approximately 700 pounds of onion seed is planted. The onion seed acreage is cultivated and irrigated until the first part of April, at this point the onion plant is called a transplant. Your employees harvest the onion transplants, place them into wooden crates and ship them by truck to \*\*\*. Until the onion transplants are re-planted they must receive special treatment. Once in \*\*\* the transplants are taken to the growers' fields which have been prepared by the onion transplants with your equipment. After the planting, the growers cultivate and irrigate the onions, the frequency of either operation depends on the weather. When the onions have matured, your employees harvest, sack, load and truck them to your warehouse in your trucks. At the warehouse, the matured onions are unloaded and run through your grading equipment. The onions are graded as to size and quality and, packaged under your company's various labels. Once the onions are bagged, you sell them and ship them to the buyers. After receiving payment from the buyers, you settle up with growers usually on a per bag basis. In one case, all costs are split with the grower.

FLSA section 13(b)(12) provides an overtime premium pay exemption for any employed in agriculture. FLSA section 3(f) defines "agriculture" 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, the raising of live-stock, fur-bearing animals or poultry, and any practice (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.

With regard to the information you submitted, it is clear that your farm operations in \*\*\* are among those activities which are farming operations. However, the subsequent activities performed in \*\*\* are among those practices which are not susceptible to precise definition. In fact, the Colorado operations appear to fail somewhere between bona fide share cropping arrangements and out-right land rental for actual farm operations. It has long been recognized that a person need not own the land on which the farming operations are performed to be considered a farmer within the meaning of FLSA section 3(f). Furthermore, a sharecropper who qualifies as a bona fide independent contractor is considered the same as any other farmer, and if (s)he meets the 500 man-day test is responsible for minimum wage compliance with respect to his/her own employees. Employees of both types of farmers may be exempt from overtime premium pay pursuant to FLSA Section 13(b)(12).

While your operations in \*\*\* include agricultural activities such as planting and harvesting of agricultural commodities, the operations do not include the cultivation and tillage of soil, the cultivation and irrigation of the agricultural commodities, or the actual growing of the onion transplants. Nevertheless, based on the particular facts involved we view your \*\*\* operations as among those which are performed by a farmer and his/her employees as such operations as are incidental to or in conjunction with the farmer's operations. Accordingly, it is our opinion that your employees are exempt from overtime premium pay pursuant to FLSA Section 13(b)(12) while exclusively engaged in your farming operations.

Sincerely,

William M. Otter  
Administrator

Enclosure