

**FLSA-1364**

March 24, 1995

This in reply to your letter of February 24, 1995, on behalf of \*\*\* requesting an opinion on the application of the minimum wage and overtime pay provisions of the Fair Labor Standards Act (FLSA) to employees of \*\*\* (the Park). Your constituent states that the Park is a seasonal operation that is open for less than seven months a year, and operates amusement rides within the boundaries of the \*\*\* Recreation Area under a license with the Department of Agriculture.

The FLSA is the Federal law of most general application concerning wages and hours of work. All employees covered under this law and not otherwise exempt must be paid a minimum wage of not less than \$4.25 an hour and overtime premium pay of not less than one and one-half times their regular rates of pay for all hours worked in excess of 40 in a workweek.

Section 13(a)(3) of the FLSA provides a complete minimum wage and overtime pay exemption for any employee employed by an establishment which is an amusement or recreational establishment if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of the average receipts for the other six months of such year. This exemption, however, does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from the FLSA's minimum wage provisions, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture. Your constituent's license with the Department of Agriculture to operate amusement rides at the \*\*\* Recreation Area is a contract for purposes of section 13(a)(3) of the FLSA. Thus, the complete minimum wage and overtime pay exemption contained in section 13(a)(3) is not applicable to employees of the Park.

Section 13(b)(29) of the FLSA provides a partial overtime exemption for any employee of an amusement or recreational establishment that meets one of the seasonality tests contained in section 13(a)(3), if the establishment is located in a national park or national forest or on land in the National Wildlife Refuge System and if the employee (A) is an employee of a private entity engaged in providing services or facilities in a national park or national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture, and (B) the employee receives compensation for employment in excess of fifty-six hours in any workweek at a rate of not less than one and one-half times the regular rate at which he or she is employed. Consequently, employees of the Park must be paid a minimum wage of not less than \$4.25 an hour and overtime premium pay for hours worked in excess of fifty-six in a workweek.

We trust that this is responsive to your inquiry.

Sincerely,

Daniel F. Sweeney  
Deputy Assistant Administrator