



February 5, 2004

FLSA2004-1

Dear *Name**,

This responds to your letter dated September 2, 2003, to Ms. Kristine Iverson, Assistant Secretary for Congressional and Intergovernmental Affairs, enclosing correspondence from *Name** contacted your office regarding the application of Federal law to seafood processors, and specifically regarding the application of the law to *Name**. Your letter was referred to this office for response as the Wage and Hour Division is responsible for interpreting and enforcing the *Fair Labor Standards Act of 1938, as Amended* (FLSA) – the Federal law at issue in this matter.

Before discussing the issues raised by your constituent regarding the FLSA, it is important to note that it is the policy of the Wage and Hour Division to not comment on investigations which have yet to be concluded. As discussions between the New Orleans District Office of the Wage and Hour Division and *Name** are on-going, this matter has not yet been concluded. Therefore, this response is limited to addressing the issue of why employees of a seafood processing plant are not subject to section 13(a)(6)(C) of the FLSA.

The FLSA is a law of general application which requires, among other things, that all covered and nonexempt employees be paid at least the minimum wage for all hours worked, and at least one and one-half times their regular rate of pay for all hours worked over forty (40) in a workweek. As a general principle, coverage under the FLSA is broadly construed so as to affect its remedial purposes, and exemptions are narrowly interpreted and limited in application to those who clearly are within the terms of the exemption.

Your constituent specifically asks whether the exemption allowing piece rate pay for “hand harvest laborers” might apply to crab picking and packing. Section 13(a)(6)(C) of the FLSA is an exemption from both the minimum wage and overtime requirements of the Act for employees who are employed in “agriculture,” and who: (i) are employed as hand harvest laborers and are paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment; (ii) commute daily from his or her permanent residence to the farm on which employed; and (iii) have been employed in agriculture less than thirteen weeks during the preceding calendar year. The plain language of the exemption requires that the employment be in “agriculture,” as defined under the FLSA.

The term “agriculture” has a specific meaning under the FLSA. Section 3(f) of the FLSA defines the term 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 (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, furbearing animals, or poultry, and any practices (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.” The activities engaged in by crabmeat pickers and packers do not constitute “farming,” nor is the work in a seafood processing plant performed “by a farmer or on a farm.” Therefore, the work of crabmeat pickers and packers does not constitute “agriculture” under any of the FLSA’s definitions. In addition to the fact that seafood processing is not agriculture, the Department has determined that “hand harvesting” refers only to “manually gathering or severing” a “soil grown crop” from “the soil, stems, or roots at its growing position in the field.” See 29 CFR 780.312. Crabmeat picking and packing does not fall within this description.

Your constituent states that wages are paid on a piece rate basis. It is important to note that piece rate basis of pay is not a factor in determining whether or not work is “agriculture” under the FLSA, nor, standing alone, in determining the applicability of any exemption, and is not restricted in use by only the agriculture industry.



*Name** raises a further concern, noting the similarities between seafood laborers and agricultural laborers, to have both industries abide by the same laws. Just as employers of crabmeat pickers and packers who are subject to the FLSA are required to pay overtime, so must farmers who employ workers to handle or process commodities which have come from farms other than their own. Farmers can be exempt from this requirement only when their employees are handling or processing products which have been produced on their own farm. Similarly, fishers “at sea” are exempt when processing their own catch, but not when processing catches harvested by other boats (See Section 13(a)(5) and 29 CFR 784.131).

I trust that the above is responsive to your request.

Sincerely,

Tammy D. McCutchen
Administrator

Enclosure

*Note: * The actual name(s) was removed to preserve privacy.*