



February 5, 2004

FLSA2004-2

Dear **Name***,

This responds to your letter dated September 2, 2003, to Ms. Kristine Iverson, Assistant Secretary for Congressional and Intergovernmental Affairs, which enclosed correspondence from **Name* of 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 issue 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 ongoing, this matter has not yet been concluded. Therefore, this response is limited to addressing the issue of why employees of an onshore seafood processing plant are not employed in “agriculture” as defined in the FLSA.

The FLSA is a law of general application which requires, among other things, that all covered 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 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.

There is currently no exemption from the FLSA for onshore crab pickers and packers. The exemption in section 13(a)(5) for “first processing” of seafood applies only to processing done “at sea.” Furthermore, the *Fair Labor Standards Amendments of 1974* repealed section 13(b)(4) of the FLSA effective May 05, 1976, which had provided an overtime exemption applicable to employees in the canning, processing, marketing, freezing, curing, storing, packing for shipment, or distributing of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any byproduct thereof.

Employees picking and packing crabmeat, such as those of your constituent, perform activities which would have fallen within the scope of the section 13(b)(4) overtime exemption. Once the amendment became effective, employers subject to the Act became obligated to pay their seafood processing employees overtime for all hours worked in excess of forty (40) in a workweek (unless the employees were exempt under another section of the Act).

You ask whether seafood processors might fall under the exemption described in Section 13(b)(12), which effects employees employed in “agriculture.” 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, 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 that seafood workers should be treated the same as agricultural workers. 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

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