

**FLSA-1140**

January 12, 1976

This is in reply to your letter dated December 11, 1975, asking if the employees working at the State's fish cultural stations would be included under the fisheries exemption in section 13(a)(5) of the Fair Labor Standards Act.

It is our opinion that unless the 20% tolerance for non-exempt work is exceeded (IB 784.116), the State may claim the 13(a)(5) exemption for employees engaged in operating a fish hatchery. The fact that Congress mentioned such factors as weather, fish runs, etc., as reason for the exemption is not controlling where, as here, it also specifically named as an exempt activity "propagating."

It is also our opinion that employees engaged in operating a fish hatchery are engaged in agriculture within the definition of "primary agriculture", see IB 780.109. Section 780.120 indicates that both propagating and farming of fish may qualify for exemption. It is immaterial that the product (fish) is not sold in commerce.

The pamphlets which explain section 13(a)(5)(Part 784) and the agriculture exemptions, Interpretative Bulletin Part 780, are enclosed for your information.

Sincerely,

Administrator