

## **FLSA-1131**

May 18, 1976

This is in reply to your letter of March 30, 1976, addressed to Secretary of Labor Usery to which you attached a copy of a previous letter concerning the application of the Fair Labor Standards Act to employees of food and drink concessions aboard American excursion vessels. We regret that we did not receive your letter of February 17, 1976, and the delay in response is a result thereof.

The Fair Labor Standards Act is the Federal law of most general application concerning wages and hours of work. Section 13(b)(6) of the Act exempts from the overtime requirements "any employee employed as a seaman". A seaman is considered as one who performs, aboard a vessel, service which is rendered primarily as an aid in the operation of the vessel as a means of transportation. This is true with respect to vessels navigating inland waters, including such vessels as ferry and pleasure boats, as well as ocean-going and coastal vessels. However, as stated in section 783.34 of the enclosed copy of 29 CFR Part 783, concessionaires and their employees aboard a vessel ordinarily do not perform their services subject to the authority, direction, and control of the master of the vessel, except incidentally, and their services are ordinarily not rendered primarily as an aid in the operation of the vessel as a means of transportation. As a rule, therefore, they are not employed as seamen for purposes of the Act.

If you have any further questions, you may wish to contact our Wage and Hour Division office at 26 Federal Plaza, Room 2946, New York, New York 10007 (telephone: 212-264-8185). The people in that office will be glad to assist you in any way possible.

Sincerely,

William Hoffman, Director  
Division of Minimum Wage and  
Hour Division

Enclosure