

FLSA-766

May 3, 1981

This is in reply to your inquiry concerning the position of the Department of Labor contained in 29 CFR 778.320 as it applies to a voluntary payment for travel time that is not considered hours worked under the Fair Labor Standards Act (FLSA). You ask whether such payments must be included in employees' regular rates of pay for the purpose of computing overtime pay. We regret any inconvenience you may have experienced as a result of the delay in our response.

Your question stems from the Department's revision of section 778.320, published in the Federal Register on January 23, 1981, in which travel time was deleted as an example of an activity the voluntary payment for which could be excluded from the regular rate of pay.

The reason for the deletion of travel time in revised section 778.320 is explained in detail in the marked section on the first page of the enclosed reprint from the Federal Register of January 23, 1981. With this discussion in mind, you can see that section 778.320(b) provides that where travel time need not be counted as hours worked, but is paid for by the employer with the understanding that the time is not hours worked, such payments need not be included in the regular rate for the purpose of computing any premium pay that may be due.

We trust the above is responsive to your inquiry.

Sincerely,

William M. Otter
Administrator