

FLSA-987

April 23, 1985

This is in further response to your letter of February 25 concerning the application of the Fair Labor Standards Act (FLSA) to individuals employed by motor carriers. You wish to know if the provisions of FLSA section 13(b)(1) apply to drivers employed by two intrastate bus companies who may also work as drivers for an interstate charter bus company. You state that these individuals "volunteer to work the interstate charters" and "are not required to do so as part of their employment for the intrastate companies." In a telephone conversation with a member of my staff on March 14, you indicated that the three bus companies in question are commonly owned.

The FLSA, which is administered by the Wage and Hour Division, is the Federal law of most general application concerning the wages and hours of work. The Act requires that all covered and nonexempt employees be paid at least \$3.35 an hour for all hours worked over 40 in a workweek.

Section 13(b)(1) of FLSA provides an exemption from the Act's overtime pay requirements for any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act (MCA) of 1935. This has been interpreted as applying to any driver, driver's helper, loader, or mechanic employed by a carrier whose activities directly affect the safety of operation of motor vehicles engaged in the transportation on the public highways of passengers or property in interstate or foreign commerce within the meaning of MCA. The terms and conditions of this particular exemption are further explained in 29 CFR Part 782 (copy enclosed).

Transportation within a single State is in interstate commerce within the meaning of FLSA where it forms a part of a practical continuity of movement across State lines from the point of origin to the point of destination. For example, drivers of buses carrying interstate passengers and their baggage to or from transportation terminals are engaged in the transportation of passengers and property in interstate commerce within the meaning of MCA and may be exempt under section 13(b)(1) of FLSA.

The U.S. Department of Transportation has held that drivers, drivers' helpers, loaders, or mechanics would be subject to the Secretary of Transportation's jurisdiction under section 204 of MCA for a 4-month period beginning with the date they would have been called upon to, or actually did, engage in activities directly affecting the safety of operation of motor vehicles on the public highways in interstate commerce. During this period, the overtime pay exemption contained in section 13(b)(1) of FLSA would apply to such employees. If, at the end of the 4-month period, the employees are no longer engaged in interstate commerce, or in the regular course of their employment are no longer subject to making one of the interstate trips, jurisdiction under section 204 of MCA would cease and the employees would no longer be exempt from overtime pay under section 13(b)(1) of FLSA.

The exemption criteria of the "4-month rule" described above may be applied to any of the bus drivers referred to in your inquiry. Additional information would be needed in order to make a determination concerning the application of FLSA section 13(b)(1) to the other categories of safety-affecting employees of the intrastate bus companies.

FLSA section 7(n) provides an exemption from the Act's overtime pay requirements for employees "of an employer engaged in the business of operating a street, suburban or interurban electric

railway, or local trolley or motorbus carrier..." making charter trips. In order for this exemption to apply, the motorbus carrier must make its services available to the public at large as part of a local transit system. You have not provided sufficient information for us to determine whether the bus companies referred to in your inquiry would qualify in this regard. However, it should be noted that this exemption would have no application to those bus companies if they provide their transportation services solely on a charter or contractual basis.

We trust that the above is responsive to your inquiry. However, if we may be of any further assistance, please let us know.

Sincerely,

Herbert J. Cohen
Deputy Administrator

Enclosure