

FLSA-996

February 14, 1986

This is in response to a letter of October 7, 1985, from *** Texas. In her letter, *** requested an opinion on the application of section 13(b)(1) of the Fair Labor Standards Act (FLSA) to drivers employed by . In a letter dated December 18, 1985, you stated that all future correspondence and communications concerning the October 7 letter should be directed to you.

The October 7 letter stated that *** is a motor carrier operating tractor and trailer rigs for the purpose of transporting unprocessed milk from dairies to milk wholesalers. Currently these rigs are not specifically regulated by the Department of Transportation (DOT). All of the dairies are located within the State of Texas. The milk wholesalers are located within the State, with the exception of one wholesaler located in , Oklahoma. Within the first six months of 1985, 93,326,868 pounds of milk were delivered by *** trucks. Of that amount, 6,619,204 pounds were delivered from a Texas dairy to the ***, Oklahoma, wholesale. On an average, *** milk trucks make thirteen runs to , Oklahoma, per week and any *** truck driver is subject to assignment to the Lawton route.

The FLSA is the Federal law of most general application concerning wages and hours of work. Under FLSA covered and nonexempt employees must be paid not less than the minimum wage rate of \$3.35 an hour for all hours worked and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek.

Section 13(b)(1) of FLSA provides a complete overtime pay exemption 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, and whose duties affect the safety of operation of a motor vehicle engaged in transportation on public highways in interstate or foreign commerce, as outlined in Interpretative Bulletin, 29 CFR Part 782.

To establish DOT's jurisdiction under section 204 of MCA over a driver who has not been working on an interstate shipment, the carrier must first be able to show its own involvement in interstate commerce. Secondly, the carrier must then be able to present evidence that the employee could, in the regular course of his or her employment, be reasonably expected to have been involved in the carrier's interstate activities.

DOT has held that a driver would be subject to the Secretary of Transportation's jurisdiction under section 204 of MCA for a 4-month period beginning with the date the driver could have been called upon to, or actually did, engage in interstate or foreign transportation {46 Federal Register 37902 (July 23, 1981)}. During this period the overtime pay exemption contained in section 13(b)(1) of FLSA would be applicable to the driver. If at the end of the 4-month period the driver is no longer engaged in interstate or foreign commerce, or in the regular course of his or her employment is no longer subject to making one of the interstate trips, jurisdiction under section 204 of MCA would cease and the driver would no longer be exempt from overtime pay under section 13(b)(1).

Since you state that, on an average, *** trucks make thirteen weekly runs from a Texas dairy to , Oklahoma, and that any *** truck driver could be subject to assignment to the Lawton route, it appears that DOT's 4-month rule would be applicable to *** truck drivers. Therefore, provide the

conditions above are met, *** truck drivers would be subject to the Secretary of Transportation's jurisdiction, and the overtime pay exemption under section 13(b)(1) of FLSA would apply to the drivers.

We trust that the above is responsive to your inquiry.

Sincerely,

Herbert J. Cohen
Deputy Administrator