

FLSA 1296

March 30, 1994

This is in response to your letter in which you request an opinion concerning the applicability of section 13(b)(1) of the Fair Labor Standards Act (FLSA) to employees of one of your clients who work as drivers, driver's helpers and mechanics.

The Wage and Hour Division of the Department of Labor administers and enforces the FLSA, the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees be paid a minimum wage of \$4.25 an hour and not less than one and one-half times their regular rate of pay for all hours worked over 40 in a workweek.

You state that your client operates three terminal locations that are all organized in the same manner and perform the same functions. Each has a fleet of vehicles used for the transportation of freight moving in interstate commerce. Freight is picked up at sea ports, and is delivered intrastate as well as to out-of-state locations. Backhaul freight is picked up outside the state for delivery to various locations. All of the drivers are included in a pool of employees subject to assignment of driving duties involving freight moving in interstate commerce.

You also state that each terminal is also engaged in towing and recovery functions. This work is performed by company drivers who are part of the pool of drivers. These drivers tow and/or recover other vehicles that are moving in interstate commerce on a daily basis. They remove privately owned vehicles and commercial vehicles that have out-of-state license tags, and/or Interstate Commerce Commission tags from the interstate highway system.

Finally, the client's mechanics all perform maintenance and/or repair functions on the vehicles owned by the client. These vehicles are used for direct long-haul transportation activities and/or towing and recovery activities. All the mechanics are assigned duties which require them to perform safety affecting maintenance and repairs on any, or all, of the vehicles.

Section 13(b)(1) of the FLSA provides an exemption from its overtime pay provisions 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). This has been interpreted as applying to drivers, driver's helpers, loaders, and mechanics whose duties directly affect the safety of operations of motor vehicles involved in transportation on the public highways of passengers or property in interstate or foreign commerce within the meaning of MCA. This also applies to transportation within a single State where it forms a part of a practical continuity of movement across State lines from the point of origin to the point of destination. The terms and conditions of this particular exemption are further explained in 29 CFR Part 782 (copy enclosed).

The U.S. Department of Transportation has held that drivers, driver's helpers, loaders, or mechanics would be subject to its 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 the FLSA would apply to such employees. If, at the end of the 4-month period, the employees 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 the FLSA. From the information contained in your letter it appears that your client's drivers, driver's helpers and mechanics meet the requirements discussed above, and would qualify for exemption under section 13(b)(1) of the FLSA, provided their duties directly affect the safety of operation of motor vehicles involved in interstate or foreign commerce, as discussed in the appropriate sections of 29 CFR Part 782.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein.

We trust that the above information is responsive to your inquiry.

Sincerely,

Maria Echaveste
Administrator