

FLSA-664

August 17, 1976

This is in regard to your inquiry concerning the application of the Fair Labor Standards Act to workers engaged in the rehabilitation of railroad right of way when overtime is worked.

The Fair Labor Standards Act in section 13(b)(2) provides an exemption from its overtime provisions for any employee of an employer subject to Part 1 of the Interstate Commerce Act. The provisions of Part 1 of that Act apply to common carriers engaged in interstate commerce in the transportation of passengers or property by rail. Employers in this category include railroads, rail express companies, sleeping car companies, and refrigerator car companies.

Therefore, employees of railroads who are engaged in the rehabilitation and maintenance of the right of way are not required to be paid overtime premium pay under the Fair Labor Standards Act for work in excess of either 8 hours a day or 40 hours in a week.

Sincerely,

Herbert J. Cohen
Assistant Administrator