

FLSA-992

February 19, 1987

This is in reply to your letter of January 26 concerning the application of the overtime pay exemption contained in section 13(b)(1) of the Fair Labor Standards Act (FLSA) to drivers employed by one of your clients. You specifically request an opinion affirming that the facts presented in your letter of August 11, 1986, establish that your client's drivers are exempt from the overtime pay requirements of FLSA pursuant to section 13(b)(1). We regret the delay in responding to you, but a search of our files indicates that we did not receive your letter of August 29, 1986, in which you initially made this request.

Section 13(b)(1) of FLSA provides an exemption from its overtime pay requirements, but not from its minimum wage requirements, for any employee subject to the jurisdiction of the Secretary of Transportation under section 204 of the Motor Carrier Act of 1935 (MCA). 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 the public highways in interstate or foreign commerce, as outlined in Interpretative Bulletin, Part 782.

Transportation confined to points within a single State from a storage terminal of commodities which have had a prior movement by rail, pipeline, motor, or water from an origin in a different State is in interstate or foreign commerce within the meaning of the Motor Carrier Act, if the shipper has a fixed and persisting transportation intent beyond the terminal storage point at the time of shipment. (See section 782.7(b)(2) of the interpretative bulletin.)

The term "fixed and persisting transportation intent" as used by the Department of Transportation refers to the intent of the shipper of the commodities into the State. The Department of Transportation has advised that the intent existing at the time the movement starts governs and fixes the character of the shipment, provided that the intent persists throughout the movement. Your correspondence indicates the out-of-State shippers have a fixed and persisting intent at the time of shipment that at least some of the merchandise shipped will be transported beyond the terminal storage point. Therefore, *** drivers who are engaged in the transporting of such goods to their ultimate destination may qualify for the overtime pay exemption contained in section 13(b)(1) of FLSA.

The U.S. Department of Transportation has held that a driver would be subject to the jurisdiction of the Secretary of Transportation under section 204 of the 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. 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 or foreign trips, jurisdiction under section 204 of the MCA would cease and the driver would no longer be exempt from overtime pay under section 13(b)(1) of FLSA.

We hope this satisfactorily responds to your inquiry.

Sincerely,

Susan R. Meisinger
Deputy Under Secretary

Enclosure