

**FLSA - 1181**

May 2, 1988

This is in further response to your letter concerning application of the Fair Labor Standards Act (FLSA) to an "interstate governmental agency." You wish to know the definition of the term "Interstate Governmental Agency" as used in WH Publication 1318. We regret the delay in responding to your inquiry.

The FLSA is the Federal Law of most general application concerning Wages and Hours of work. This law requires that all covered and non-exempt employees be paid not less than the minimum wage of \$3.35 an hour and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek. The provisions of FLSA apply to all employees of State and local governments except those who are specifically excluded in section 3(e)(2)(c) of FLSA and those who may qualify for exemption from the minimum wage and/or overtime pay provisions of FLSA.

Section 3(x) of FLSA defines "public agency" to mean the Government of The United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Rate Commissions), a State; or any interstate governmental agency. In order to qualify as a public agency, the entity must be administered by individuals who are responsible to publicly-elected officials or to the general electorate. That is, the administering individuals must be subject to appointment and removal by public officials, or must themselves be elected officials.

Other indications that an entity is part of a State or local government are:

- a. whether the entity is created directly by the State or political subdivision so as to constitute a department or administrative arm of the government,
- b. whether an entity has the power of eminent domain,
- c. whether its records are public, and
- d. whether it is treated as governmental for purposes of Federal and State taxes,, including the Social Security Tax.

The term "any interstate governmental agency" refers to an entity which is created by two or more states or local governments of two or more States and qualifies as a public agency as discussed above.

We trust that the above is responsive to your inquiry.

Sincerely,

Paula V. Smith  
Administrator