

## **FLSA-977**

December 21, 1988

This is in response to your letter of November 2 on behalf of \*\*\*. Your constituent is concerned, in part, about the classification of armed guards on armored trucks as driver's helpers for the purposes of the overtime pay exemption contained in section 13(b)(1) of the Fair Labor Standards Act (FLSA).

The FLSA is the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt 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.

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 services pursuant to the provisions of section 204 of the Motor Carrier Act of 1935 (MCA) (recodified at 49 U.S.C 3102). This has been interpreted by the Secretary of Transportation (Interstate Commerce Commission prior to October 15, 1966) as applying to any driver, driver's helper, loader, or mechanic employed by a carrier, and whose duties affect the safety of operation of motor vehicles engaged in transportation on public highways in interstate or foreign commerce, as outlined in Interpretative Bulletin, 29 CFR Part 782.

As defined for MCA jurisdiction, a driver's helper is an employee other than a driver, who is required to ride on a motor vehicle when it is being operated in interstate or foreign commerce within the meaning of MCA. This definition has classified all such employees, including armed guards on armored trucks, as helpers with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service because of the employees' engagement in activities which directly affect the safety of operation of such motor vehicles in interstate or foreign commerce. See section 782.4(a) of the Interpretative Bulletin for a description of such safety affecting activities.

To the extent that the messenger-guards described in the Manual, enclosed with your correspondence, come within the definition of driver's helper contained in section 782.4 of the Interpretative Bulletin, they would be subject to the overtime pay exemption contained in section 13(b)(1) of FLSA. It should be noted that one of the safety-affecting duties listed in section 782.4 is the loading of vehicles, and that one of the job duties of the messenger-guard contained in the Manual is the loading of trucks. Therefore, the classification of the messenger-guards as driver's helpers is appropriate within the meaning of section 782.4 of the Interpretative Bulletin.

The interpretations contained in the Interpretative Bulletin with respect to the scope and applicability of the overtime pay exemption contained in section 13(b)(1) of FLSA, indicate the construction of the law which the Secretary of Labor and the Administrator of the Wage and Hour Division believe to be correct in the light of the decisions of the

courts, the Interstate Commerce Commission, and since October 15, 1966, its successor, the Secretary of Transportation. We are not aware of any court decisions or information that would cause a reexamination of the interpretations contained in the Interpretative Bulletin, as they relate to driver's helpers.

With regard to your constituent's request that an investigation of the \*\*\* in Charlotte, North Carolina, be made to determine compliance with the Department of Transportation's (DOT's) regulations concerning motor carriers, you may wish to suggest that he contact DOT's Federal Highway Administration, Bureau of Motor Carrier Safety, at 400 Seventh Street, SW, Washington, DC 20590, for further assistance. That office is responsible for the administration and enforcement of the provisions of section 204 of MCA.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

Paula V. Smith  
Administrator