



October 29, 2004

FLSA2004-28NA

Dear *Name**,

This is in response to your request for an opinion concerning the application of the exemption in Section 13 (b)(1) of the Fair Labor Standards Act (FLSA) to certain employees of an employer who is engaged in the manufacture of houses that are transported on the highways and across state lines. You specifically reference the loaders and mechanics employed by your client.

You state that during the manufacturing process, employees load various parts and components of the manufactured house onto a frame. The frame, wheels, and components of the manufactured house are integrated to ultimately form a trailer, which is then towed to the customer's site by tractor truck. The wheels are removed from the frame and the house is secured to a foundation. The frame, wheels, and house components are assembled as one unit, which is designed to meet all Department of Transportation regulations so that it may be lawfully towed by tractor truck on the highways. Failure of the employees to properly load and assemble the parts and components of the house onto the frame could materially affect the safety of the trailer on the highways.

Section 13(b)(1) of the FLSA provides an overtime pay exemption for any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to Section 204 of the Motor Carrier Act (MCA). The exemption applies to any driver, driver's helper, loader, or mechanic employed by a carrier, and whose duties affect the safety of operation of motor vehicles on the public highways in interstate or foreign commerce. 29 CFR 782.2(b)(2). The application of the exemption is discussed in the enclosed Regulations, 29 CFR Part 782.

The regulations state that a loader is defined for MCA jurisdiction purposes as an employee of a carrier "whose duties include, among other things, the proper loading of his employer's motor vehicles so that they may be safely operated on the highways of the country." A loader is engaging in work "directly affecting safety of operation so long as he has responsibility when such vehicles are being loaded for exercising judgment and discretion in planning and building a balanced load or in placing, distributing, or securing the pieces of freight in such a manner that the safe operation of the vehicles on the highways in interstate or foreign commerce will not be jeopardized." See Section 782.5(a). On the other hand, the regulations state that an employee is not a loader subject to the exemption "merely because he furnishes physical assistance when necessary in loading heavy pieces of freight, or because he deposits pieces of freight in the vehicle for someone else to distribute and secure in place, or even because he does the physical work of arranging pieces of freight in the vehicle where another employee tells him exactly what to do in each instance and he is given no share in the exercise of discretion as to the manner in which the loading is done." See Section 782.5(c); opinion letter of March 5, 2001.

The regulations define a mechanic for MCA jurisdiction purposes as an employee employed by a carrier "whose duty it is to keep motor vehicles operated in interstate or foreign commerce by his employer in a good and safe working condition." See Section 782.6(a). A mechanic is engaging in work affecting "safety of operation" when he, among other things, keeps lights and brakes in a good and safe working condition; performs inspection, adjustment, repair, or maintenance work on the motor vehicles themselves (including trucks, tractors and trailers, and buses); hooks up tractors and trailers, including light and brake connections, and inspects such hookups. Other activities of the mechanic determined by the courts as affecting "safety of operation" are described in Section 782.6(a).

Activities which do not directly affect such "safety of operation" include, among other things, "construction work, manufacture or rebuilding of truck, bus, or trailer bodies, and other duties which are concerned with the safe carriage of the contents of the vehicle rather than directly with the safety of operation on the public highways of the motor vehicle itself." See Section 782.6(c)(1).



Based on the information you provided, we are unable to make a definite determination as to whether your client's loaders and mechanics are subject to the overtime exemption in Section 13(b)(1) of the FLSA. However, we hope that you are able to make a determination in light of the above relevant criteria.

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 which 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. You have represented that this opinion is not sought by a party pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this information is responsive to your inquiry.

Sincerely,

Barbara R. Relford
Office of Enforcement Policy
Fair Labor Standards Team

Enclosure

** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).*