



May 23, 2007

FIELD ASSISTANCE BULLETIN No. 2007-2

**MEMORANDUM FOR REGIONAL ADMINISTRATORS
DISTRICT DIRECTORS**

**FROM: PAUL DeCAMP
Administrator**

SUBJECT: Change in Application of the FLSA § 13(b)(1) “Motor Carrier Exemption”

This memorandum is to advise staff of a change in the application of the FLSA § 13(b)(1) “Motor Carrier” overtime exemption, which precludes application of FLSA overtime standards to employees for whom the Secretary of Transportation has the power to set qualifications and maximum hours of service.

The *Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users* (SAFETEA-LU), PL 109-59, changed the power of the Department of Transportation to set hours standards for employees of motor carriers and motor private carriers from transportation involving the operation of “motor vehicles” to transportation involving “commercial motor vehicles”:

SAFETEA-LU, SEC. 4142
REGISTRATION OF MOTOR CARRIERS AND FREIGHT FORWARDERS.

(a) Definitions Relating to Motor Carriers. – Paragraphs (6), (7), (12), and (13) of section 13102 of title 49, United States Code, are each amended by striking “motor vehicle” and inserting “commercial motor vehicle (as defined in section 31132)”.

Thus, with the passage of SAFETEA-LU on August 10, 2005, an employee is covered by the FLSA § 13(b)(1) exemption only if that employee is engaged in transportation involving a “commercial motor vehicle.”

A “commercial motor vehicle” is defined in 49 U.S.C. § 31132 as a vehicle used on the highways in interstate commerce to transport passengers or property if it:

- (1) has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater; or

- (2) is designed or used to transport more than 8 passengers (including the driver) for compensation; or
- (3) is designed or used to transport more than 15 passengers, including the driver, and not used to transport passengers for compensation; or
- (4) is used in transporting hazardous material, requiring placarding under regulations prescribed by the Secretary of Transportation pursuant to Title 49 section 5103.

As a result of SAFETEA-LU, employees engaged in transportation via vehicles such as most light pick-up trucks and automobiles, who historically had been covered by the FLSA § 13(b)(1) exemption from overtime, are no longer exempt. Effective August 10, 2005, the FLSA § 13(b)(1) exemption applies only to employees engaged in otherwise exempt transportation using vehicles that meet the above definition of a “commercial motor vehicle.”

The Wage and Hour Division has revised the relevant sections of the Field Operations Handbook and Fact Sheet # 19 to reflect the change in application discussed in this memorandum.