



August 26, 2005

FLSA2005-27

Dear **Name***,

This is in response to your letter inquiring whether Medical Equipment Installation Technicians (Installers) employed by your client qualify for the Motor Carrier Exemption, 29 U.S.C. § 213(b)(1), copy enclosed, from the overtime requirements of the Fair Labor Standards Act (FLSA).

Your client provides support services for manufacturers and facilities such as hospitals and medical offices using medical imaging technology. Your client does not manufacture or sell the medical equipment but rather installs the equipment. The Installers are responsible for traveling to facilities throughout the United States where they install the equipment or de-install existing equipment. They travel via leased or rented vehicles or by airplane, depending on the distance from the installer's home base to the facility where the equipment is to be installed. You estimate that the Installers travel across state lines 20-35 times per year, usually several times a month. The Installers travel with toolboxes and specialized tools and equipment weighing between 35 and 700 pounds, depending upon the equipment being installed.

Section 13(b)(1) of the FLSA provides an exemption from the overtime requirements of the FLSA to "any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service." The Motor Carrier Act (MCA), 49 U.S.C. 31502-31504, copies enclosed, provides authority to the Secretary of Transportation and delineates those employees over which the Secretary has jurisdiction, such as those employed in transportation as defined in 49 U.S.C. 13501, copy enclosed. Pivotal to your inquiry is whether your client can be classified as a "motor private carrier." According to 49 U.S.C. 13102(13), copy enclosed, motor private carrier is defined as:

- A person, other than a motor carrier, transporting property by motor vehicle when—
- A) the transportation is as provided in section 13501 of this title;
 - B) the person is the owner, lessee, or bailee of the property being transported; and
 - C) the property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise.

Section 13501 of title 49 provides jurisdiction to the Secretary of Transportation over transportation between a place in one State and a place in another State. Requirement A is met by your client since the Installers regularly travel between one state and another. This type of travel meets the requirements of §13501(1)(A), which states that the property should be transported between two states.

Next, we must analyze the property that is being transported: the toolboxes and other equipment needed for installation. You argue that tools and equipment needed for installation qualify as property for purposes of the Motor Carrier Act. In an Opinion Letter cited in your inquiry dated June 5, 1974, we found that the transportation of service parts used to make technical repairs qualified as the transportation of property under the MCA. Additionally, in an Opinion Letter dated August 17, 2004, copy enclosed, the transportation of display rack parts and replacement parts qualified as interstate transportation under the MCA, according to representatives of the Department of Transportation. Recently, the court in Anderson v. Timber Products Inspection, Inc., 334 F. Supp. 2d 1258, 1261-2 (D. Ore. 2004), found that tools used by lumber inspectors constitute property transported in interstate commerce. Therefore, we find that the tools and equipment used by the Installers constitutes property under the second requirement of the definition of motor private carrier. Finally, the transportation is in furtherance of a commercial enterprise, the installation of medical equipment, as required by the definition of motor private carrier. Therefore, your client meets the definition of a motor private carrier under the Motor Carrier Act.

Additionally, in order to qualify for the Motor Carrier Exemption, employees of a motor private carrier must "engage in activities of a character directly affecting the safety of operation of motor vehicles in the transportation on the public highways." 29 C.F.R. § 782.2, copy enclosed. Installers meet this



requirement as driving a vehicle in interstate commerce is a safety affecting activity. See 29 C.F.R. § 782.3, copy enclosed. Therefore, the Installers qualify for the FLSA section 13(b)(1) Motor Carrier Exemption.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the questions 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 to a 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. This opinion letter is issued as an official ruling of the Wage and Hour Division for purposes of the Portal-to-Portal Act, 29 U.S.C. 259. See 29 C.F.R. 790.17(d), 790.19; Hultgren v. County of Lancaster, Nebraska, 913 F.2d 498, 507 (8th Cir. 1990).

We trust that the above is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.
Deputy Administrator

Enclosures: 29 U.S.C. 213(b)(1)
49 U.S.C. 31502-31504
49 U.S.C. 13102
49 U.S.C. 13501
29 C.F.R. 782.2, 782.3
Opinion Letter dated August 17, 2004

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