

UNITED STATES DEPARTMENT OF LABOR

Office of the Solicitor

April 7, 1941

Legal Field Letter

No. 48

Erratum

The following error which appears in Legal Field Letter No. 48 is herewith brought to your attention.

In a letter dated March 18, 1941 to H. Thomas Austern, the first page and paragraph notation which appears at the end of the subject should read as follows:

p. 36, par. 3, instead of p.36, par. 5.

DEPARTMENT OF LABOR  
Office of the Solicitor

April 1, 1941

LEGAL FIELD LETTER

No. 49

SUBJECT: Employees of all types of Motor Carriers—  
Policy of the Wage and Hour Division in  
regard thereto.

1. Section 13(b)(1) of the Fair Labor Standards Act exempts from the provisions of section 7 "any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act, 1935."

DRIVERS

2. The Interstate Commerce Commission now regulates the hours of service of drivers of common, contract, and private<sup>1/</sup> motor carriers engaged in transportation in interstate commerce, with certain exceptions set forth in paragraph 6 below.

3. Generally, therefore, drivers employed by common, contract, and private motor carriers engaged in transportation in interstate commerce are exempt from the overtime provisions of the Act under section 13(b)(1).

4. For practical reasons, until further notice, in the field of wholesale distribution the Wage and Hour Division will not seek restitution for truck drivers who are engaged solely in hauling within a state, from a warehouse or other establishment of a wholesaler, goods received from outside the state, where the only alleged violation is of section 7. Of course, such employees may still seek such restitution through suits under section 16(b) on their own initiative. See paragraph 7 of Interpretative Bulletin No. 9.

NONDRIVING EMPLOYEES

5. The Interstate Commerce Commission has just published its report in Ex Parte MC-2 and Ex Parte MC-3 containing a finding that

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<sup>1/</sup> Regulations of hours of drivers employed by private carriers were prescribed by Interstate Commerce Commission, effective October 15, 1940. Under the Division's interpretation such drivers were not within the section 13(b)(1) exemption prior to October 15, 1940. Accordingly, employees who were not compensated for overtime worked prior to that date as required by section 7 can sue therefor under section 16(b). As indicated in R. 773, however, and for the reasons set forth there, we seek no restitution for violations of section 7 with respect to these drivers.

mechanics, loaders, and drivers' helpers (including conductorettes and armed guards in armored trucks) affect the safety of operation of motor vehicles and are therefore subject to the Commission's authority to prescribe qualifications and maximum hours of service pursuant to Section 204(a) of the Motor Carrier Act. As is apparent from the Commission's opinion, loaders do not include employees engaged solely in unloading motor vehicles or red caps for bus companies engaged in loading baggage on busses. Similarly, mechanics do not include garage employees who merely oil, gas, grease, or wash motor vehicles, nor do they include painters, carpenters, or tarpaulin tailors. The Commission has not yet issued any regulations concerning maximum hours of service for these classes of employees and must hold further hearings before so doing. We have heretofore indicated that until hours of service are actually prescribed and made effective for particular classes of employees, the section 13(b)(1) exemption does not become operative. It may well be that the courts will agree with this view. Nevertheless, the Administrator has determined for practical reasons, until further notice, that alleged violations of section 7 of the act with respect to these classes of employees (mechanics, loaders, and drivers' helpers) shall not be included in any negotiation for administrative settlement or in any legal action commenced under section 17 of the act. Of course, such employees may still seek restitution through suits under section 16(b) on their own initiative.<sup>2/</sup>

In regard to all other classes of employees of all types of motor carriers, investigation and disposition of cases involving violations of section 6 or section 7 will proceed normally. Such employees are clearly not within the exemption contained in section 13(b)(1). But see paragraph 8, below.

#### SPECIAL CLASSES

6. The following classes of employees are not within the exemption from section 7 contained in section 13(b)(1), and cases involving them will be handled as heretofore. (1) Drivers who are engaged in the production of goods for interstate commerce, but who are not engaged in transportation of goods in interstate commerce (see paragraph 6 of Interpretative Bulletin No. 9); (2) any employees, including drivers, for a company engaged solely in "pickup and delivery service" under contract with or as agent for a railroad or steamship line; (3) any employees, including drivers, employed by mail contractors.

7. A truck driver employed by a private motor carrier, who regularly spends a substantial part of his time during any workweek on nonexempt activities which have nothing to do with transportation (such as producing goods for commerce), is not within the exemption contained

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<sup>2/</sup> In this connection it is noteworthy that at least two courts have already held that in suits under section 16(b), the courts may determine what employees lie within the Commission's power to prescribe hours of service and may reach decisions different from those reached by the Commission.

in section 13(b)(1). Similarly, any mechanic, loader, or driver's helper, who might otherwise be considered to be within the section 13(b)(1) exemption after any hours of service regulations prescribed by the Commission became effective, would not be within the exemption contained in section 13(b)(1) during any workweek in which he engaged in a substantial amount of nonexempt work (such as producing goods for commerce).

8. In view of the peculiar circumstances surrounding the litigation which culminated in the decision of the United States Supreme Court in the case of United States v. American Trucking Assns., Inc., holding that the Interstate Commerce Commission's jurisdiction was limited to employees of common and contract carriers whose activities affect the safety of operations of motor vehicles, for administrative purposes the Wage and Hour Division will not seek restitution for any employee of a common or contract carrier for the time prior to May 27, 1940, the date of the Supreme Court's decision. Such a policy in no way limits the rights of employees in suits under section 16(b) to recover unpaid minimum wages and overtime compensation computed at the rate prescribed in section 7 of the act for the period prior to the decision in the American Trucking Assns., Inc. case. The policy stated in this paragraph is not applicable in the field of private motor carriers as to whose employees there is no reason to limit the restitution period.

9. Interpretative Bulletin No. 9 is currently being revised and amplified. It will be distributed to the regional offices and to interested parties within the near future. The inspection staff has been issued Inspection Field Letter No. 17 (second revision), which sets forth the restitution policy of the division in regard to employees of all types of motor carriers and supersedes all other inspection field letters dealing specifically with motor carriers.