

FLSA-540

March 19, 1974

This is in reply to your letter of November 8, 1973, concerning the application of section 13(b)(1) of the Fair Labor Standards Act to wholly intrastate drivers of a bulk oil and petroleum distributor. You refer specifically to a situation in which a local distributor transports his products into the state in one of his trucks and then delivers them locally (wholly intrastate) in small trucks. You state you were advised by a compliance officer of the Department of Transportation that "if the petroleum distributor had even one transport truck that brought the petroleum products into the state to the distributor's storage-terminal, all the wholly intrastate delivery drivers would also be subject to the Department of Transportation requirements."

As you know, section 13(b)(1) of the Fair Labor Standards Act states that the overtime provisions of section 7 shall not apply to: --

"(1) any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935;"

We have been advised by the Department of Transportation that drivers who are engaged in intrastate transportation of hazardous materials (of which gasoline is one) on behalf of a motor carrier who also engages in interstate transportation of property by motor vehicle are subject to the hours-of-service rules in the Motor Carrier Safety Regulations. However, the statute that authorizes the application of the hours-of-service rules to intrastate drivers in such a case is not section 204 of the Interstate Commerce Act. Rather the authority is found in the Explosives and Other Dangerous Articles Act, 18 U.S.C. 831-835.

Therefore, the overtime exemption contained in section 13(b)(1) of the Fair Labor Standards Act would not be applicable to the wholly intrastate drivers of a bulk oil and petroleum distributor in the situation presented by you.

Sincerely,

Warren D. Landis
Acting Administrator
Wage and Hour Division