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U.S. DEPARTMENT OF LABOR
Employment Standard Administration
Washington, D.C. 20210

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JAN 6 1977

This is in response to your letter of October 20, 1976, asking whether "over-the-road" trucks drivers who are engaged in interstate commerce are required to be paid a premium overtime wage after 40 hours of work in a workweek.

As you are aware, section 13(b)(1) of the Fair Labor Standards Act, a copy of which is enclosed, provides an exemption from its overtime pay (but not its minimum wage) requirements for 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 of 1935. The Department of Labor's official interpretation of the scope of section 13(b)(1) appears in Part 782 of the Interpretative Bulletin (29 C.F.R. Part 782), a copy of which is also enclosed. If the truck drivers to whom you refer fall within the requirements of Part 782, then they are not protected by the overtime provisions of the Fair Labor Standards Act.

Under the Kentucky minimum wage and overtime law, however, as you indicate, there is no counterpart to the FLSA's Section 13(b)(1) exemption. In this situation, the FLSA requires that the more stringent State statute must prevail, rather than the FLSA's standard. Specifically, Section 18(a) of the FLSA states, in pertinent part:

> No provision of this Act * * * shall excuse noncompliance with any * * * State law * * * establishing * * * a maximum workweek lower than the maximum workweek established under this Act * * *.

Thus, assuming that the truck drivers in question are covered by the Kentucky minimum wage and overtime statute, we see no barrier to enforcement of the Kentucky law. As held in Williams v. W.M.A. Transit Co., 472 F.2d 1258 (C.A.D.C. 1972), a State's power to impose overtime pay protection for various categories of employees, including drivers of motor vehicles, is not pre-empted by the fact that the Secretary of Transportation may also have authority under Section 204 of the Motor Carrier Act of 1935 to establish qualifications and maximum hours of service for some of the same employees. As the Supreme Court noted in Levinson v. Spector Motor Service, 330 U. S. 649,661 (1947), "There is no necessary inconsistency between enforcing rigid maximum hours of service for safety purposes and at the same time, within those limitations, requiring compliance with the increased rates of pay for overtime work done...."

We trust that the above is of assistance to your office in this matter.

Sincerely,

by Warren D. [illegible]

Ronald J. Jones
Administrator

Enclosures