

FLSA-998

January 24, 1977

This is in reply to your letter of August 28, 1976, regarding the application of section 13(b)(1) of the Fair Labor Standards Act to truck drivers of a client who is engaged in temporary warehousing and distribution of merchandise.

In the instant case, approximately 50 percent of the merchandise is shipped to your client's warehouse from out of state directly across state lines, and 40 percent is shipped from a remote distribution point within the state after being received in bulk lots from out-of-state sources. At this remote distribution point the carload lots are separated into less than carload lots and then shipped by rail to your client's warehouse. The merchandise received at the remote distribution point was not predestined when it crossed the state line.

All merchandise received at your client's warehouse has been sold (prior to arrival) to specific purchasers by firms unrelated to your client. When the merchandise arrives at your client's warehouse, it is accompanied by a manifest showing ultimate distribution, number of pieces, weight, and shipper (apparently the shipper in approximately 50 percent of the cases is the remote distribution point and in 50 percent of the cases is an out-of-state shipper). Transportation arrangements from your client's warehouse to the ultimate purchaser are arranged by the seller prior to arrival of merchandise at your client's warehouse to the ultimate purchaser within 24 to 48 hours.

The Department of Transportation (which since 1966 has enforcement authority over the safety of operation provisions of the Motor Carrier Act) follows a previous decision of the Interstate Commerce Commission that there is no interstate or foreign commerce within the meaning of Part II of the Interstate Commerce Act if the shipper has no fixed and persisting transportation intent beyond the terminal storage point at the time of shipment (see section 7827(b)(2) of the enclosed Regulations, Part 782). This would seem to be the case in the matter of the merchandise received from the remote distribution point since that merchandise was not predestined for any other destination after arrival at that point.

However, the merchandise which arrives at your client's warehouse from out of state, under the conditions set out in the 3rd paragraph above, would be in a continuing movement of interstate commerce and drivers transporting such goods from your client's warehouse to the ultimate purchaser would be within the section 13(b)(1) exemption (see section 782.2 of the enclosed bulletin for the discussion of this exemption as applicable to employees of private carriers).

If you have additional questions concerning the matter, we have people in the local office of the Wage and Hour Division in Suite 110, Mills Building, 5410 Mariner Street, Tampa, Florida 33609, telephone: 223-2154, who will be glad to be of assistance.

Sincerely,

Warren D. Landis
Deputy Administrator
Wage and Hour Division

Ronald J. James

Administrator

Enclosure