

SCA-117

April 26, 1978

This is in reference to the discussions held on April 3, 1978, regarding compensable hours of work of truck drivers employed by mail haul contractors under the Fair Labor Standards Act and the Service Contract Act. A major point of discussion involves the position of the Wage and Hour Division with respect to the treatment as hours worked of time spent in sleeper-berths by truck drivers.

It has been our position since 1961, as stated in section 785.22 of 29 CFR Part 785, copy enclosed, that where an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than 8 hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. If the sleeping period is of more than 8 hours, only 8 hours may be credited. Where no expressed or implied agreement to the contrary is present, the 8 hours of sleeping time and meal periods constitute hours worked. Thus, an employer can only exclude from computation of hours worked a maximum of 11 hours in any 24 hour period when an employee is on duty for an uninterrupted, continuous period of 24 hours or more. The actual amount excludable (up to the 11 hour maximum) will, of course, depend on the actual time the employee is on a meal break or is sleeping.

Further, section 785.41 of Part 785 states that any work which an employee is required to perform while traveling must be counted as hours worked. Thus, it is our position that an employee who drives a truck, bus, automobile, boat or airplane, or an employee who is required to ride therein as an assistant or helper, is working while riding, except during bona fide meal periods or when permitted to sleep in adequate facilities furnished by the employer. These two sections must be read in conjunction and not as separate positions regarding sleeping time. As section 785.22 makes clear, the maximum amount of time for sleeping that can be deducted from working time where employees are on 24-hour duty is 8 hours.

In a Release (R-1933) entitled "Hours Worked in Trucking Clarified", issued February 15, 1943, the then Administrator took the position that truck drivers riding in the trucks' sleeping berths while the relief driver was at the wheel need not be compensated in accordance with the Fair Labor Standards Act for time so spent. This ruling was changed in 1961 by sections 785.22 and 785.41. In this connection, Part 785.3 states, in part, that "These interpretations will remain in effect until they are rescinded, modified or withdrawn. All other rulings, interpretations or enforcement policies inconsistent with any portion of this part are superseded by it."

Pages 6 and 7 of WH Publication 1359 "Motor Carriers and Other Transportation Firms Under the Fair Labor Standards Act" contains the position stated in 785.22.

We have carefully reviewed the above long-standing positions in light of the mail haul contractors' problems and must conclude that these positions are necessary, proper and in accord

with the intent of the law. The arbitrary splitting of a 24-hour shift in half and only paying employees for 12 hours is not acceptable.

The question of compliance involving team drivers on a 36-47 hour shift raised at the April 3rd meeting is still under review.

Sincerely,

Xavier M. Vela
Administrator