

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage and Hour Division
WASHINGTON, D.C. 20210

(Gen.) FLORA



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This is with reference to your recent letter requesting an administrative interpretation of Section 3(b)(7) of the Farm Labor Contractor Registration Act of 1963, as amended, as it pertains to the specific example which you have stated. I regret the delay in responding to your letter.

Section 3(b)(7) of the Act excludes from the definition of a farm labor contractor "any common carrier ..." or "... any full-time regular employee thereof engaged solely in the transportation of migrant workers."

Section 40.2(s) of 29 CFR Part 40 defines "common carrier" as one which holds itself out to the general public to engage in transportation of passengers for hire, whether over regular or irregular routes, and which holds a valid certificate of authorization for such purposes from an appropriate local, state or Federal agency. One example of such carrier is [redacted] Bus Lines which makes its services available to the general public but may also provide an exclusive service to specific persons. You have proposed the formation of a corporation which would be licensed by the State of [redacted] for a certificate of public convenience and necessity limited to the transportation of agricultural laborers only. Since the activities of the corporation as authorized by the State issued certificate are restricted and are not available to the general public, such corporation would not qualify as a common carrier under 40.2(s) and, thus, would not qualify for exemption under Section 3(b)(7).

The exemption also applies to any full-time regular employee of a common carrier who engages solely in the transportation of migrant workers. In your example, you ask whether an employee of a State certified common carrier who transports workers for two hours in the morning and two hours in the afternoon would qualify for exemption if he works in the fields during those hours when he is not driving. The answer to your question is "no". Such employee could not qualify for exemption under 3(b)(7) because he would neither be working full-time for the common carrier nor would he be engaged solely in the transportation of migrant workers. The term "who engages solely in the transportation of migrant workers" is referring to the full-time regular employee of a common carrier and not to the common carrier. By definition, a common carrier could not engage solely in the transportation of migrant workers.

I trust that this will answer your questions.

Sincerely,



Herbert J. Cohen
Assistant Administrator