

WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR
OFFICE OF THE GENERAL COUNSEL

INTERPRETATIVE BULLETIN

No. 9

THE SCOPE AND APPLICABILITY OF THE EXEMPTION PROVIDED BY
SECTION 13(b)(1) OF THE FAIR LABOR STANDARDS ACT OF 1938

1. Section 13(b)(1) of the Act exempts certain employees of motor carriers from the maximum hour provisions of Section 7, as follows:

"The provisions of section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935;"

This section, it will be noted, provides no exemption from the minimum wage provisions of Section 6.

2. The scope of the exemption provided by Section 13(b)(1) involves the interpretation not only of the Fair Labor Standards Act but also of Section 204 of the Motor Carrier Act, 1935. The scope of the power of the Interstate Commerce Commission under Section 204 has not been fully determined by the Commission and has not been passed upon by the courts. Opinions expressed at this time are, therefore, subject to revision if and when future action by the Interstate Commerce Commission so requires. This Bulletin is merely intended to indicate the course which the Administrator will follow in the performance of his administrative duties unless he is directed otherwise by the authoritative rulings of the courts or unless this Bulletin is revised in accordance with future action by the Interstate Commerce Commission.

3. Sections 204(a)(1) and (2) of the Motor Carrier Act, 1935, place upon the Interstate Commerce Commission the duty to regulate common and contract carriers by motor vehicle and to that end authorize the Commission to "establish reasonable requirements with respect to qualifications and maximum hours of service of employees, and safety of operation and equipment." In a proceeding styled "Ex parte No. MC-2" the Commission has established maximum hours of service for drivers of motor vehicles operated by common and contract carriers in interstate and foreign commerce. 3 MCC 665; 6MCC 557. Such drivers will be considered exempt from the

maximum hour provisions of the Fair Labor Standards Act by virtue of Section 13(b) (1) thereof.

4. Sections 204(a)(1) and (2) of the Motor Carrier Act, 1935, are not clear, however, as to whether the Commission has power to establish qualifications and maximum hours of service for employees of common and contract carriers other than drivers. Division 5 of the Commission has already indicated that the power of the Commission to regulate maximum hours of service is limited "to those employees whose functions in the operation of motor vehicles make such regulations desirable because of safety considerations." 3 MCC 665,667. The report of the entire Commission in the same case expressed approval of this view. 6 MCC 557. The entire Commission, however, is presently engaged in a further investigation directed specifically to a determination of the question whether its jurisdiction is limited to employees "whose activities affect the safety of operation of motor vehicles." Ex parte No. MC-28. If the Commission determines that its jurisdiction is thus limited, a further hearing will be held to determine what, if any, employees other than drivers can be considered to be within the category of employees as to whom considerations of safety require a limitation of hours. Ex parte No. MC-28. Until an order of the Interstate Commerce Commission determines that employees of common and contract motor carriers other than drivers are within the power of the Commission under Sections 204(a)(1) and (2), it is our opinion that the employees (other than drivers) of such carriers should be considered as not within the exemption provided by Section 13(b) (1).

5. Section 204(a)(3) of the Motor Carrier Act, 1935, places upon the Commission the duty "to establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment." No qualifications or maximum hours of service for such employees of private motor carriers have as yet been established. The Commission is presently engaged in an investigation to determine the extent of its jurisdiction over employees of private motor carriers engaged in interstate or foreign commerce. Ex parte No. MC-3. In view of the words "if need therefor is found," it is doubtful whether the Commission can be considered as having "power" (within the meaning of Section 13(b)(1) of the Fair Labor Standards Act) over employees of private carriers until it has made such a finding. In addition, it is impossible at this time to

prognosticate what action the Commission will take. At least, therefore, until an order is issued by the Commission in this connection, it is our opinion that the employees of private carriers should be considered as not within the exemption provided by Section 13(b)(1).

6. The wage and hour provisions of the Fair Labor Standards Act apply to employees engaged in interstate commerce or in the production of goods for interstate commerce. See Interpretative Bulletins Nos. 1 and 5. The Act is, therefore, broader in its coverage of employees engaged in connection with motor carrier transportation than is Section 204 of the Motor Carrier Act, 1935, which is limited to employees of carriers engaged in interstate or foreign commerce. Thus, the Fair Labor Standards Act applies to employees engaged in the transportation of persons or property by motor vehicle between places within a State where the transportation constitutes the production of goods for commerce, as the term "produced" is defined in Section 3(j) of the Act, even though the goods have not yet entered into interstate commerce so as to subject the employees engaged in connection with their transportation to the jurisdiction of the Interstate Commerce Commission. Examples are (a) drivers transporting goods in and about a plant producing goods for commerce; (b) chauffeurs or drivers of company cars or busses transporting officers or employees from place to place in the course of their employment in an establishment which produces goods for commerce; (c) chauffeurs driving customers of a business producing goods for commerce; (d) drivers who transport goods from a producer's plant to the plant of a processor who, in turn, sells goods in interstate commerce, the first producer's goods being a part or ingredient of the second producer's goods; (e) drivers who transport goods from a factory to the plant of an independent contractor who performs operations on the goods and returns same by truck to the factory which further processes such goods for commerce. These and other employees engaged in connection with the transportation of persons or property by motor vehicle who are subject to the Fair Labor Standards Act because engaged in the production of goods for interstate commerce and who are not subject to the Motor Carrier Act, 1935, because not engaged in interstate or foreign commerce within the meaning of that Act, are not within the exemption provided by Section 13(b)(1). Where for any other reason employees engaged in connection with motor transportation are not within the power of the Interstate Commerce Commission "to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act, 1935," such employees are not within the exemption provided by Section 13(b)(1).