

MAR 12 1997

This is in response to your letter of December 6, 1996, inquiring about whether an employee working as a security guard/driver on an armored car would be covered by the Fair Labor Standards Act (FLSA), 29 U.S.C. 201.

The FLSA is the Federal law of most general application concerning wages and hours of work. An employee who is covered under this law and not otherwise exempt must be paid a minimum wage of not less than \$4.75 an hour for all hours worked and not less than one and one-half times his or her regular rate of pay for all hours worked in excess of 40 in a workweek.

Section 13(b)(1) of the FLSA, 29 U.S.C. 213(b)(1) provides a complete overtime pay exemption for any employee whose hours of work are subject to regulation by the U.S. Department of Transportation. In construing the extent of the Section 13(b)(1) exemption, the courts have ruled that employees do not have to cross a state line to be subject to the exemption if they are transporting property destined for another state. Such property may consist of checks drawn on out-of-state banks transported by employees of an armored car company who do not drive across a state line. Baez v. Wells Fargo Armored Service, 938 F.2d 180 (11th Cir. 1991). In that case the armored car employees were subject to Section 13(b)(1) even though all the transportation of out-of-state checks took place within 35 miles of Miami, Florida.

It is also not necessary that the employer hold a permit from the Interstate Commerce Commission for the overtime exemption to be applicable to its drivers and drivers' helpers. The exemption turns on the power of the Department of Transportation to regulate the employer, not the actual exercise of that power.

I trust that this information has been responsive to your inquiry.

Sincerely,

Daniel F. Sweeney
Office of Enforcement Policy
Fair Labor Standards Team