

MAR - 5 2001

OPINION LETTER

Dear Mr.

This is in reply to your letter of June 2, 1999, enclosing a copy of previous correspondence concerning the application of section 13(b)(1) of the Fair Labor Standards Act (FLSA) to "team loaders." We regret the delay in responding to you.

From your letters and from your further conversations with a member of the Fair Labor Standards Team you have provided information beyond that considered in the letter from Mr. Sweeney of May 10, 1999. We have learned that the employees in question participate in the loading and securing of a racing automobile and parts for the automobile on a trailer for transportation behind a motor vehicle in interstate commerce. During 10 months of the year in the racing season, the trailers are regularly moved from race site to race site throughout the United States. The staff and trailers will spend one or two weeks at a location and then reload and move to another race location or to the home base to pick up a new car or cars and necessary equipment. One crew of five employees loads the automobile, while the rest of the employees are assigned one or more of eight specific parts to load and secure.

You have advised that if the automobile and parts are not properly secured on the trailer their movement during transit could affect the safety of operation of the motor vehicle and the trailer it tows. Any movement of the cars or the large and heavy parts (motors, transmissions, machinery and the fork lifts used to move the auto parts in and out of the trailers) could cause damage to the trailer, its contents and affect the safety of operation of the vehicle. Movement within the trailer of the cars or the heavy equipment could cause the trailer to come unhitched from the cab or become unbalanced and roll or a large piece of equipment could break through the side wall of the trailer and strike vehicles following alongside or behind the moving trailer.

Section 13(b)(1) applies to safety-affecting employees involved with interstate transportation by a common, contract or private motor carrier. The classifications of employees who might possibly affect safety have been limited to drivers, drivers' helpers, mechanics and loaders. 29 C.F.R. 782.2(a)(2). Loaders are those employees who, when vehicles are being loaded, have responsibility "for exercising judgment and discretion in planning and building a balanced load or in placing, distributing or securing the pieces of freight in such a manner that the safe operation of the vehicles on the highways in

interstate or foreign commerce will not be jeopardized." 29 C.F.R. 782.5(a). In addition, an employee is not a loader "merely because he furnishes physical assistance when necessary in loading heavy pieces of freight, or because he deposits pieces of freight in the vehicle for someone else to distribute and secure in place, or even because he does the physical work of arranging pieces of freight in the vehicle where another employee tells him exactly what to do in each instance and he is given no share in the exercise of discretion as to the matter in which the loading is done." 29 C.F.R. 782.5(c). Thus, only those of the "team loaders" who exercise the judgment and discretion necessary to determine that the automobile and parts have been loaded safely on the trailer would qualify for the section 13(b)(1) overtime exemption. You have provided a check list used by the loading crew, and the check list identifies articles A through H to be loaded along with the car. If these items are routinely loaded in exactly the same place and manner on the trailer each time it is moved, it is not clear which of the employees is exercising the discretion and judgment necessary to qualify them as loaders subject to section 13(b)(1).

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein.

We trust that this information is responsive to your inquiry.

Sincerely,

Thomas M. Markey
Acting Administrator