



AFR 18 2001

Dear Mr.

This is in reference to your letter concerning the application of the Fair Labor Standards Act (FLSA) to certain travel time in company owned vehicles.

The "Employee Commuting Flexibility Act" (Section 2102, Public Law 104-188) amended the Portal-to-Portal Act to allow employers and employees to agree to the use of employer-provided vehicles for commuting to and from work, at the beginning and end of the workday, without the commuting time being counted as hours worked. In order for this commuting time not to be considered hours worked, the use of the employer's vehicle must be within the normal commuting area for the employer's business or establishment and the use of the vehicle must be subject to an agreement between the employer and the employee or employee's representative.

The legislative history of this enactment, House Report 104-585, 104<sup>th</sup> Cong., 2d Sess. (May 20, 1996), indicates the intent of the Congress that the vehicle involved be of a type that does not impose "substantially greater difficulties to operate than the type of vehicle which would normally be used for commuting." For example, an automobile, a pick-up truck, a van or a mini-van would not normally involve substantially greater difficulties to operate, even if modified to carry tools or equipment, including having no passenger seats. The fact that a vehicle displays permanently-affixed decals or other advertising does not change the analysis. On the other hand, we would consider the following types of vehicles, by their very nature, to involve substantially greater difficulties to operate than a vehicle normally used for commuting: "18-wheelers," truck-mounted cranes, truck-mounted drilling rigs, concrete trucks, and trucks equipped to haul other heavy equipment. Additionally, if the employee is required to drive a different route than normally used for commuting (due to such vehicular restrictions as weight allowances on bridges, size allowances in tunnels, or chemicals transported), we would consider the vehicle to impose substantially greater difficulties to operate than a vehicle normally used for commuting. One further statement of Congressional intent in the Committee Report is that the employee should incur no out-of-pocket or direct costs for driving, parking or otherwise maintaining the employer's vehicle (e.g., gas and tolls) in connection with commuting in employer-provided vehicles.

You indicate that your employees use a company truck for commuting from home to work and between job sites during the work day. Currently you pay the employees from the time they leave home at the beginning of the work day until the time they return home at the end of the work day. You wish to time the distance from each employee's home to your office and deduct that amount of time at the beginning and end of each work day as normal home to work travel.

To the extent that the commuting arrangements meet the requirements specified above, we would not require compensation for the time spent commuting between home and work in employer-provided vehicles. Your letter states that, although an employee generally commutes from home directly to the first job site and returns home from the last job site, you plan to base the amount of time deducted upon the commuting time between an employee's home and your office. Therefore, you must ensure that the amount of time you deduct never exceeds the actual length of an employee's commute between home and the job site, in order to compensate the employee for all hours worked.

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 this is responsive to your inquiry.

Sincerely,

  
Thomas M. Markey  
Acting Administrator