

**FLSA-456**

November 30, 1970

This is in reply to your letter of October 23, 1970, with which you enclosed two copies of the collective bargaining agreement for employees employed by companies \*\*\* of Newark, New Jersey. This data is furnished in response to our letter of October 14, 1970,\*\*\* and is for our consideration in connection with a petition for exemption under section 13(b)(11) of the Fair Labor Standards Act of the drivers and helpers of the above three companies.

The information you enclosed and certain other data furnished to date as to the wage payment plan and the hours of work for the drivers and helpers \*\*\* tends to indicate that the wage payment plan has the general purpose and effect of reducing their hours of work to, or below , the maximum workweek applicable to them under section 7(a) of the Fair Labor Standards Act. A definite ruling on the petition cannot be made until similar data for the remaining weeks of 1970 to complete the representative annual period has been submitted, including information as to the "average weekly hours" or "average workweek" as determined under the method described in section 551.8(g)(2) of our Regulations, Part 551. However, in the interim, the Wage and Hour Division will not assert that the exemption does not apply to the drivers and helpers of the three firms concerned, provided the necessary information requested is submitted on or before April 1, 1971.

The section 13(b)(11) exemption applies only to full-time drivers or drivers' helpers for weeks when they are employed in making local deliveries. Overtime compensation must be paid to any such driver or helper for any weeks in which more than 20% of his time is spent in duties other than those included in the exemption (Regulations, section 551.8), unless some other exemption applies.

This finding will be effective so long as there is no significant change in any of the essential facts presented in support of the petition. Your attention is directed to section 516.14 of the recordkeeping regulations which prescribes the additional records your company must maintain.

This finding is also conditioned upon your sending to this office a copy of the notice of the petition given in writing to the collective bargaining representatives of the employees covered by the plan. This is required by section 551.3 of the regulations.

Sincerely,

Robert D. Moran  
Administrator