

FLSA-1109

May 9, 1972

This is in reply to your letters of February 25, and April 5, 1972, requesting an opinion that the profit sharing plan *** is a bona fide profit sharing plan within the meaning of section 7(e)(3)(b) of the Fair Labor Standards Act.

As the plan is designed primarily to provide benefits for eligible employees upon retirement or disability, and for their beneficiaries in the event of death, we have considered it under the provisions of section 7(e)(4) of the Act and section 778.215 of Interpretative Bulletin, Part 778. It is section 7(e)(4) which governs the status for regular rate purposes of any contributions made by an employer pursuant to a plan providing old age, retirement, life, accident or health insurance or similar benefits for employees. It makes no difference that such a plan is financed out of profits. In order for an employer's contributions to a benefit plan to qualify for exclusion from the regular rate of pay under section 7(e)(4) of the Act, the requirements of sections 778.214 and 778.215 of Part 778 must be met.

It is our opinion that contributions and payments made pursuant to this plan may be excluded from the regular rate under the Fair Labor Standards Act.

Sincerely,

Francis J. Costello
Assistant Administrator