

FLSA-682

July 10, 1975

This is in further reference to your letter of June 13, 1975, requesting a finding as to the application of section 13(b)(11) of the Fair Labor Standards Act to your client, ***, Miami, Florida.

You will note the exemption in section 13(b)(11) is intended for employees "making local deliveries." "Making local deliveries" is defined in section 551.8(d) of Regulations, Part 551, and does not include "any movement of goods which does not accomplish a transfer of possession from one person to another; transportation of goods as part of a process of production...."

You state that ***, is engaged in the business of hauling construction products from material yards to area jobsites exclusively for ***, and that the two companies have common ownership and control. This indicates that the two companies are part of the same enterprise. (See section 3(r) of the enclosed copy of the Fair Labor Standards Act before the 1974 amendments. Section 3(r) was not affected by the amendments insofar as consideration of section 13(b)(11) is concerned.) Transfer of goods within the same enterprise does not accomplish the necessary transfer of possession of the goods hauled and, therefore, would not come within the term "making local deliveries."

Therefore, the exemption provided by section 13(b)(11) is not applicable.

Sincerely,

Warren D. Landis
Acting Administrator
Wage and Hour Division

Enclosures