

FLSA-678

September 21, 1979

This is in reply to your letter of August 10, 1979, in which you request that an interim finding be made pursuant to section 13(b)(11) of the Fair Labor Standards Act, and 29 CFR Part 551.2(c) to the effect that the delivery payment plan of the *** bottler and distributor of soft drink beverage products whose principal place of business is in ***, which is applicable to its local delivery drivers and assistant drivers employed at the company's distribution centers in *** and *** has the purpose and effect of reducing the hours worked of such employees to, or below, the maximum workweek applicable to them under section 7(a) of the Act.

Notwithstanding the lack of experience under your client's plan for a representative period of one year, its provisions and manner of operation indicate that by the end of such first representative year the effect of the plan can reasonably be expected to reduce the weekly hours worked by the covered employees in such first year of operation to, or below, the maximum workweek applicable to them under section 7(a) for the Act. Therefore, the plan is approved on an interim basis subject to the conditions which follow.

Since your client's proposed plan lacks the requisite one year's experience, the weekly hours worked and the average workweek of all the full-time employees covered by the plan during the first half-year in which it has been in operation will be taken as representative of the one year period. If at the end of the first half-year period the effect of the plan has not been to reduce the hours worked of the covered employees to, or below, the maximum workweek applicable to them under section 7(a) of the Fair Labor Standards Act, the employer must pay to each of his employees overtime compensation on the basis of each workweek within the half-year period standing alone, unless the employee is otherwise exempt.

The procedure discussed immediately above will be followed at the end of the next subsequent half-year in the initial year of operation. The hours of work of the covered employees shall be cumulative from the first half-year period to the next half-year period. The average workweek at the end of each half-year period will be determined by dividing the cumulative hours of work at the end of such half-year period by the number of employees covered under the plan.

At the end of the first year of operation of your client's proposed plan, a summary of its operations shall be submitted to this office, unless the plan is terminated earlier. If the plan has not had the effect of reducing the weekly hours of work of the covered employees to, or below, the maximum applicable to them under section 7(a) of the Act, this interim finding will be null and void and overtime premium pay will be due for all hours worked in excess of 40 in a workweek by such employees over the previous year.

This finding will be effective as long as there is no significant change in any of the essential facts presented in supported of the subject petition. Your attention is directed to 29 CFR Part 516.16, which prescribes the type of records which the company must maintain.

Sincerely,

C. Lamar Johnson
Deputy Administrator

Enclosure