

## FLSA-238

December 29, 1980

Thank you for your letter asking if time spent by traveling inventory takers in certain kinds of travel constitutes compensable hours of work under the Fair Labor Standards Act. You make this inquiry because after informal research you learned that in the "inventory taking" business, generally, no compensation is paid for time spent traveling by inventory takers from an office to a job site. You state that in some cases, however, a mileage allowance after a twenty mile exclusion is given. In other words, twenty miles of travel from an office to a job site, or vice versa, is totally uncompensated. Any excess travel is compensated at six cents per mile. Other businesses in the industry give a flat destination allowance determined on the basis of distance from the office to a job site, which you believe is generally less than minimum wage for the time so spent. Accordingly, if these other businesses in the industry are operating legally, your client, \*\*\*, would like the opportunity to operate in the same manner, should it so choose to do.

You state that unlike the average business, there is no regular "workday" for employees of your client. Inventories are not necessarily counted during the day but in some cases may be counted after regular business hours, on a late shift, or early in the morning. The time of taking the inventory is often dictated by the client's needs. The majority of jobs are local jobs requiring travel to a job site within the general vicinity of the inventory takers' homes. Some of the jobs, however, are overnight jobs which require travel to a job site by airplane and which require accommodations at a place other than the employee's home. The inventory is counted with a mechanism worn by the inventory taker which tabulates the count. A "crew manager" is an employee who is designed to exercise limited supervisory duties over the inventory takers for any particular job and whose duties include reporting to the local office of your client prior to and on completion of such job. He or she is responsible for insuring that an adequate number of calculators and all necessary materials are transported to the job site. He or she usually drives a company owned vehicle from the local office to any job site which is reached by land vehicle or to a local airport when air travel is involved. This business is fairly standardized throughout the trade and, as far as you know, your competitors and other businesses of this nature operate in the same manner.

Your client has adopted certain specific policies as follows:

1. An inventory taker is not required to report to the local office prior to an assigned job provided the employee gives 24-hour notice that he or she intends to proceed directly to the job site or to the local airport as the case may be. In the absence of such notice, it is assumed that an inventory taker will meet at the local office prior to the commencement of a job.

B. Your client will provide transportation from the local office to a job site or local airport and return. Provision of such transportation is for the benefit of the inventory takers and the notification required by paragraph A is required for administrative

purposes only so that a crew manager will know that no other inventory takers will be arriving at the local office and that he or she may proceed to the job site or local airport.

C. Inventory takers who choose to report to a local office prior to traveling to a job site or to a local airport are not required to perform any duties on arriving at the local office prior to departure to the job.

D. An inventory taker, whether he or she travels to the job site or airport in a company vehicle or otherwise, may return to his or her personal residence directly from a job site or from an airport without traveling to a local office first.

E. On occasion, an inventory taker may be requested to transport other inventory takers and/or equipment as required, where there are insufficient company vehicles available; in such cases such inventory taker will be compensated as provided in the compensation plan.

Therefore, to clear the uncertainty which you state presently exists in your minds as to when travel time is compensable hours of work, your client requests the following ruling: That any time spent traveling by an inventory taker from a local office to a job site, or vice versa, is not "hours worked" for purposes of the FLSA.

Further, any mileage allowances paid for such travel are not to be considered compensation, but are to be considered in the nature of a reimbursement or allowance.

Whether or not time spent in travel is compensable hours of work depends upon the kind of travel involved. Generally, time spent in traveling to and from the home and the workplace is not hours of work as explained in sections 785.34 through 785.36 of the enclosed copy of 29 CFR Part 785. Where employees travel from job site to job site during the course of the day's work such travel is compensable hours of work. In this connection, see section 785.38. Travel away from home is clearly worktime when it cuts across an employee's regular workday, since the employee is simply substituting travel for other duties. See sections 785.38 and 785.39. Where an employee drives an automobile at the employer's request, such time is compensable hours of work even though performed outside the normal workday, as set forth in section 785.41.

Consequently, as indicated by the above discussion, we are of the opinion that policies "A" through "D" are not in conflict with the Act's monetary requirements. With regard to policy "E", the inventory taker or crew manager (who does not appear to be qualified for the exemption from the minimum wage and overtime provisions provided by section 13(a)(1) of the Act) who has been requested to transport other inventory takers and/or equipment is working while so doing. Accordingly, the employee must be paid for such time, and any expenses incurred while operating his or her own vehicle must be reimbursed to the extent that such costs reduce the employee's pay below the applicable minimum wage or cut into the required overtime pay. Further, where an employer reimburses an employee for expenses incurred without regard to the actual expense, any

excess remuneration must be included in the regular rate calculation when computing overtime compensation.

Sincerely,

Henry T. White, Jr.  
Deputy Administrator

Enclosure