

## FLSA-893

December 8, 1981

This is in reply to your letter of November 23, 1981, in which you request an opinion regarding your firm's proposed gainsharing plan. Under the plan, your firm proposes to provide production and nonexempt administrative employees with bonus payments which are comprised of a percentage of the firm's gainsharing pool. You wish to know if the bonus payments, (which are computed as a percentage of the employees total earnings (straight time and overtime) may be excluded from the regular rate of pay when computing overtime compensation under the Fair Labor Standards Act (FLSA).

The gainsharing pool is comprised of the excess of the estimated employee cost over the actual employee cost. The employees' share of the pool is 50%. The percentage of the total bonus which applies to each employee is arrived at by dividing the bonus by the total payroll cost. The percentage is then multiplied by each employee's total straight time and overtime wages to arrive at the applicable bonus payment.

Where an employer's payments under a bonus plan are based upon a percentage of total earnings of the employee, the payments may be excluded from the regular rate of pay if the conditions prescribed in 29 CFR Section 778.210 are met. Under the method of allocation discussed in this section, where a bonus is paid as a production incentive percentage of the employee's total compensation, including straight time, overtime, bonuses, and commissions, the overtime due under the Act is automatically included and no additional computation or payment of overtime is required.

Based on the information contained in your letter, it is our opinion that the percentage of total earnings bonus plan would not affect the regular rate of pay and would comply with the overtime pay requirements of the Act.

We wish to point out that in instances where administrative opinion letters are made public, all references made to the inquirer are deleted. We trust this responds to your inquiry.

Sincerely,

William M. Otter  
Administrator