

**FLSA-516**

March 8, 1973

This is in reply to your letter of January 23, 1973, which was addressed to Mr. James E. Patching, our Atlanta Regional Administrator, concerning the application of section 13(b)(1) of the Fair Labor Standards Act to the delivery employees of your client.

Your client is a soft drink bottler and distributor. All of the products handled by the company, except canned soft drinks, are manufactured, sold and delivered in the same State in which the company's plant is located. The canned soft drinks are manufactured, canned and packaged in two other States. The sale of extra-State canned soft drinks amounts to between 10 and 12 percent of the company's total business.

As we understand the situation, your client's deliverymen do not solicit orders. The larger customers are contacted by "advance salesmen" and the smaller customers are contacted by telephone. All of the orders taken are compiled and delivered the following business day by two-men delivery teams in motor vehicles. Both members of the delivery teams drive the motor vehicles, assist in backing, and perform other safety operations. Each delivery team engages in the delivery of the out-of-State canned soft drinks on a daily basis.

The company places its orders for canned soft drinks with the out-of-State manufacturer each Friday. Deliveries are made to the company's warehouse by motor vehicle every two or three days. Orders are placed with the manufacturer based upon seasonal experience and anticipated customer orders as reported by the company's sales personnel. Customer orders are delivered the following business day and the warehouse supply is turned over virtually every week.

It is your opinion, based upon the foregoing, that the canned soft drinks remain in an uninterrupted flow of interstate commerce from the manufacturer to the company's customer and that the company's deliverymen are exempt from the maximum hours and overtime compensation provisions of the Fair Labor Standards Act pursuant to section 13(b)(1) thereof. You request our opinion in the matter.

It is our opinion, based upon the facts set forth above, that the temporary pause in transit of the canned soft drinks in your client's warehouse does not terminate the interstate movement of the goods. Therefore, your client's deliverymen are exempt from the maximum hours and overtime compensation provisions of the Fair Labor Standards Act pursuant to section 13(b)(1) thereof on the grounds that they regularly and recurrently handle goods that are "moving in interstate commerce" within the meaning of the Motor Carrier Act of 1935.

Sincerely,

Ben P. Robertson  
Acting Administrator  
Wage and Hour Division