



WHD-OL-1995-NNNN

May 30, 1995

Dear **NAME***

This is in response to your letter requesting an opinion concerning the application of section 13(b) (11) of the Fair Labor Standards Act (FLSA) to a proposed payment plan for local delivery drivers employed by **NAME* NAME* NAME*** a wholesale beer distributor in **NAME***.

You state that the company, during the period of January 24, 1994 to January 20, 1995, regularly employed five full-time drivers who delivered beer to retail outlets such as bars, liquor stores, and grocery stores within the State of **NAME***. The drivers leave the company's warehouse in the morning, make an average of 13 stops for deliveries, and return to the warehouse upon completing their deliveries, and return to the warehouse upon completing their delivery route. The drivers are members of **NAME* NAME** which is affiliated with the **NAME* NAME* NAME***, and are paid pursuant to a collective bargaining agreement (CBA) between Local 133 and your client.

The drivers have been paid \$114.50 for delivering up to 310 cases of beer per day. For each case delivered in excess of 310, up to a maximum of 410, the drivers have been paid another \$.30. The company's contract with the union has recently been renegotiated but the only significant difference in the payment plan is that the additional \$.30 per case is applicable up to a maximum of 500 cases.

You further state that the payment plan provides an incentive to the drivers to complete their deliveries quickly and efficiently. It has had the effect of reducing the number of hours worked by the drivers to 40 hours or less per week. The 5 full-time regular drivers worked a total of 226 weeks during the representative period for an average workweek of 38.37 hours.

Section 13(b) (11) of the FLSA provides an exemption for "any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 7(a)." The Wage and Hour Division has previously approved trip rates under §13(b) (11) based upon similar CBAs between **NAME*** and wholesale beer distributors in the **NAME***.

Based on the information provided, it is our opinion that your client's proposed payment plan for its local delivery drivers in the **NAME* ANAME*** meets the requirements for the exemption described in section 13(b) (11) of the FLSA.

We trust that the above is responsive to your inquiry.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator

*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b) (7).