



WHD-OL-1965-NNNN

September 23, 1965

NAME*

This is in further reference to your inquiry regarding the application of the section 13(b) (11) exemption to the truck drivers employed by your clients. We apologize for the delay in responding to your inquiry,

It appears from your letter and attachments that these truck drivers are guaranteed their trip rates and/or mileage rates by the labor agreements that are in effect between each of the companies and the particular labor union. Such trip rates have always created an incentive for these truck drivers to complete their trips in the shortest possible time because they can work fewer hours and still receive the same guaranteed rate of pay. Due to the long distances involved on these trips (the truck drivers average approximately 200 miles per trip) they are far beyond points that the company can adequately supervise. You indicate that an hourly rate of pay with a premium of time and one half on such trips would definitely create an incentive for drivers to put in longer hours. It would be almost impossible to control the hours worked on such trips.

The guaranteed trip rates are intended to reduce and eliminate any incentive for the truck drivers to put in longer hours. When the rates were established originally, full consideration was given to the number of hours worked per week by these over-the-road drivers in arriving at compensation that would be considered equitable for distances traveled, waiting time and possible overtime. You believe that the truck drivers who are paid on a trip rate basis should be exempt under section 13(b) (11) because the past experience has had the general purpose and effect of reducing the hours worked per week by the employees, and does not result in longer workweeks.

The Department's position regarding the application of section 13(b) (11) to local delivery drivers and helpers is set forth in 29 CFR Part 551, copy enclosed. As you will note, section 551.8(d) defines the term "making local deliveries" to include the activities customarily and regularly performed in the physical transfer, to customers of a business establishment situated within the rural or urban community or metropolitan area in which the establishment is located, of goods sold or otherwise disposed of to such local customers by such establishment. **NAME***

We do not believe that the truck drivers in the instant case are engaged in "making local deliveries" within the meaning of 29 CFR section 551.8(d). The trips involve inter-city over the road journeys of great distances (200 miles) and would be excluded by the final clause of section 551.8(d) even though they did not require a round trip of more than one workday for delivery

and return to the starting point. In our opinion, the section 13(b) (11) exemption was not intended to apply in this type of situation.

Sincerely yours,

Duane A. Wendele
Acting Administrator

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