

Wage and Hour Division, Labor

§ 551.2

by acting, singing, dancing, reading, narrating, performing feats of skill, or announcing, or describing or relating facts, events and other matters of interest, and who actively participates in such capacity in the actual presentation of a radio or television program. It shall not include such persons as script writers, stand-ins, or directors who are neither seen nor heard by the radio or television audience; nor shall it include persons who participate in the broadcast or telecast purely as technicians such as engineers, electricians and stage hands;

(c) The term *special services* shall mean services beyond the scope of a performer's regular or ordinary duties as a staff performer under the agreement applicable to the employment.

[15 FR 402, Jan. 25, 1950]

PART 551—LOCAL DELIVERY DRIVERS AND HELPERS; WAGE PAYMENT PLANS

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AUTHORITY: Sec. 9, 75 Stat. 74; 29 U.S.C. 213(b).

SOURCE: 30 FR 8585, July 7, 1965, unless otherwise noted.

§ 551.1 Statutory provision.

The following provision for exemption from the overtime pay provision is contained in section 13(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 213(b)):

(b) The provisions of section 7 shall not apply with respect to:

* * * * *

(11) 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).

Under this provision, an employee employed and compensated as described in the quoted paragraph (11) may be employed without payment of overtime compensation for a workweek longer than the maximum workweek applicable to him under section 7(a) of the Act, but only if it is established by a finding of the Secretary that the employee is compensated for his employment as a driver or driver's helper making local deliveries on the basis of trip rates or other delivery payment plan that has the general purpose and effect stated in section 13(b)(11). Such a finding is prescribed by the statute as one of the "explicit prerequisites to exemption". (See *Arnold v. Kanowsky*, 361 U.S. 388, 392.)

§ 551.2 Findings authorized by this part.

(a) The Administrator, pursuant to the authority vested in him by the Secretary of Labor, will make and apply findings under section 13(b)(11) of the Act as provided in this part. Such findings shall be made only upon petitions meeting the requirements of this part, and only as authorized in this section.

(b) For the purpose of establishing whether a wage payment plan has the purpose and effect required by section 13(b)(11) for an exemption from the overtime provisions of the Act, the Administrator shall have authority, upon a proper showing and in accordance with the provisions of this part, to make a finding as to the general purpose and effect of any specific plan of compensation on the basis of trip rates or other delivery payment plan, with respect to the reduction of the length of the workweeks worked by the employees of any specific employer who are compensated in accordance with such plan for their employment by such employer as drivers or drivers' helpers making local deliveries.

(c) Any finding made as to the purpose and effect of such a wage payment plan pursuant to a petition therefor will be based upon a consideration of all relevant facts shown or represented to exist with respect to such plan that are made available to the Administrator. A finding that such plan has the