

§ 551.3

general effect of reducing the hours worked by drivers or drivers' helpers compensated thereunder to, or below, the maximum workweek applicable to them under section 7(a) of the Act is not authorized under this part unless the Administrator finds that during the most recently completed representative period of one year (based on the experience of the employer in question, or if such employer has not previously used such plan, on the experience of another employer using such plan under substantially the same conditions, all as defined in § 551.8(g)(1)), the average weekly hours, taken in the aggregate, of all full-time employees covered by the plan are not in excess of the maximum workweek applicable to such employees under section 7(a), or unless the Administrator makes an interim finding with respect to such plan that, notwithstanding a lack of experience under it for a representative period of 1 year, its provisions and manner of operation, together with the other available information concerning the plan, indicate clearly that by the end of such first representative year the effect of the plan will have been to reduce the average weekly hours worked by the employees covered by the plan in such first year of operation to, or below, such maximum applicable workweek.

§ 551.3 Petition for a finding.

Any employer desiring to establish an exemption from the overtime pay requirements of the Act with respect to employees whose employment and compensation may be considered to qualify therefor under section 13(b)(11) may petition the Administrator, in writing, for a finding under such section and this part. If the wage payment plan with respect to which the finding is sought has been the subject of collective bargaining with representatives of employees covered by the plan, the employer shall provide timely notice of such petition, in writing, to the authorized representatives or representatives of such employees and shall submit a copy of such notice to the Administrator.

§ 551.4 Requirements for petition.

A petition for a finding under section 13(b)(11) of the Act and this part shall

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include in such detail as the Administrator may deem necessary for evaluation under the standards provided by the statute and this part, all the information required by § 551.5. Such information may be presented in any form convenient to the petitioner; no particular form is prescribed for the petition. The petition shall also include, by attachment, a copy of any collective bargaining agreement or other document governing the method of payment for the work of employees covered by the wage payment plan with respect to which a finding is requested. The petition, together with any such documents, shall be filed with the Administrator, Wage and Hour Division, United States Department of Labor, Washington, DC 20210.

§ 551.5 Information to be submitted.

Every petition filed under §§ 551.3 and 551.4 shall contain the following information:

(a) A full statement of the facts relied upon by the petitioner to establish, under the applicable definitions in § 551.8, that the wage payment plan submitted for consideration: (1) Applies to employees employed (i) as drivers or drivers' helpers, or both, (ii) in "making local deliveries" and (2) determines, "on the basis of trip rates or other delivery payment plan", the compensation which such employees receive for such employment; and

(b) A complete description of the wage payment plan and full information concerning its application showing, among other things: (1) The method of compensation which it provides and the types of payments made to employees covered by the plan, together with such information as may be necessary to show how these payments are computed and how and to what extent they are actually used in determining the total compensation received by employees covered by the plan, (2) a full description of all duties performed by the employees compensated under the plan, including information as to the types of goods delivered, their points of origin and destination and the purposes for and geographical area within which they are transported by the employees, the relationship of the employer to the

consignor and consignee, and the numbers, (minimum, maximum, and average or typical) of round trips made by such employees in transporting such goods during the workday and of deliveries made during each such trip, and (3) other relevant information concerning the employees compensated under the plan including the total number of such employees employed full-time as drivers or drivers' helpers making local deliveries under the provisions of the plan during the most recent representative annual period as defined in § 551.8(g)(1), the weekly hours worked and the average workweek of such employees during such period and, if there are any significant variations in the number of such employees so employed in the particular workweeks within the period, a full statement of the facts concerning such variations, information as to any workweeks in which any employees compensated under the plan devote less than eighty percent of their worktime to duties as drivers or drivers' helpers making local deliveries; and

(c) A statement of the facts and reasons based on the history and application of the plan which are relied upon to support a finding that the plan has the general purpose and effect of reducing the hours worked by drivers or drivers' helpers covered by its provisions to, or below, the statutory maximum workweek applicable to them under the Act.

§ 551.6 Action on petition.

(a) Upon the filing of a petition as provided in this part, the Administrator will give consideration thereto, and make any further inquiry into the facts that he may deem necessary. The Administrator may require, before taking further action thereof, that notice of the petition be given to affected employees in such manner as he shall determine to be appropriate to afford them an opportunity to submit any facts or reasons supporting or opposing the finding prayed for in the petition. If the Administrator determines that the petition fails to satisfy any of the requirements of this part, he shall deny the request for a finding or, in his discretion, advise petitioners that further consideration will be given to the sub-

mission if the deficiencies are remedied within a specified time. No further consideration will be given, however, to a request for a finding if the Administrator determines that the factual situation as described in the petition is not one in which authority to make the finding is provided by section 13(b)(11) and this part.

(b) If the Administrator determines that a petition meets all requirements of this part and if he is satisfied from consideration of all relevant facts and information available to him that the wage payment plan submitted has, within the meaning of section 13(b)(11) of the Act and this part, the general purpose and effect with respect to drivers or drivers' helpers making local deliveries, who are employed pursuant to its provisions on the basis of trip rates or other delivery payment plan, of reducing the hours worked by such employees to, or below, the maximum workweek applicable to them under section 7(a) of the Act, the Administrator will make an appropriate finding to this effect, and notify the petitioner; otherwise the request for such a finding will be denied.

§ 551.7 Finding.

(a) A finding by the Administrator under paragraph (b) of § 551.6 that a wage payment plan has the purpose and effect required for exemption of employees under section 13(b)(11) and this part shall be effective in accordance with its terms upon notification to petitioners as provided in § 551.6(b). The finding shall include such terms and conditions and such limitations with respect to its application as the Administrator shall deem necessary to ensure that no exemption will be based thereon in the event of any significant change in any of the essential supporting facts.

(b) A finding made pursuant to this part may be amended or revoked by the Administrator at any time upon his own motion or upon written request of any interested person setting forth reasonable grounds therefor. Before taking such action, the Administrator shall afford opportunity to interested persons to present their views and shall give consideration to any relevant information that they may present.