

## § 551.5

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

## 29 CFR Ch. V (7-1-04 Edition)

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 submission 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.

#### § 551.8 Definitions.

As used in this part:

(a) *Secretary* means the Secretary of Labor.

(b) *Administrator* means the Administrator of the Wage and Hour Division, United States Department of Labor.

(c) *Finding* means a finding made pursuant to section 13(b)(11) of the Fair Labor Standards Act as provided in this part.

(d) *Making local deliveries* includes the activities customarily and regularly performed in the physical transfer, to customers of a business establishment situated within the rural or urban com-

munity or metropolitan area in which the establishment is located, of goods sold or otherwise disposed of to such local customers by such establishment. Included are activities performed by the driver or driver's helpers as an incident to or in conjunction with making such deliveries, such as picking up and returning the delivery vehicle at the beginning and end of the workday, cleaning the vehicle, checking it to see that it is in operating condition, loading and unloading or assisting in loading or unloading the goods, and picking up empty containers or other goods from customers for return to the establishment. Not included in the making of local deliveries are such transportation as the carriage of passengers; the transportation of any load of goods that would normally require a round trip longer than a single workday for delivery and return to the starting point; any movement of goods which does not accomplish a transfer of possession from one person to another; transportation of goods as a part of a process of production; and transportation of goods within a local community or metropolitan area as an integral part of a carriage of such goods from a point outside such community or area to a destination within it, rather than as a part of the activities customarily performed in making local deliveries, as defined in this section, in the same manner as deliveries of goods held locally for local disposition.

(e) *Employee employed as a driver or driver's helper making local deliveries* includes any employee who is employed in any workweek:

(1) To drive a delivery vehicle used in making local deliveries, or

(2) To assist the driver of such a vehicle in making such deliveries, being required to ride on the vehicle to perform such work,

and whose work in making local deliveries, as defined in paragraph (d) of this section, accounts for at least 80 percent of his hours of work in such workweek. In making and applying any finding as provided in this part, no employee shall be considered to be employed as a driver or driver's helper making local deliveries in any workweek when more than 20 percent of his hours of work results from the performance of duties