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Washington, Saturday, February 4, 1950

TITLE 3—THE PRESIDENT

PROCLAMATION 2870

NATIONAL CHILDREN'S DENTAL HEALTH DAY, 1950

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS the health of our children is of supreme importance to the future of the Nation; and

WHEREAS the prevention and early treatment of dental diseases can be a potent factor in the promotion of the general health of our young people; and

WHEREAS a joint resolution of Congress approved on February 1, 1950, provides as follows:

"That the President of the United States is hereby authorized to issue a proclamation setting aside February 6, 1950, as National Children's Dental Health Day and to invite all agencies and organizations interested in child welfare to unite upon that day in the observance of such exercises as will call to the attention of the people of the United States the fundamental necessity of a continuous program for the protection and development of the dental health of the Nation's children":

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby designate Monday, February 6, 1950, as National Children's Dental Health Day. I also direct the appropriate agencies of the Federal Government and invite the State and local governments and organizations interested in child welfare to cooperate in programs designed to focus public attention upon the vital importance of preserving and improving the dental health of our children.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this 1st day of February in the year of our Lord nineteen hundred and fifty, and of the independence of the United States of America the one hundred and seventy-fourth.

[SEAL]

HARRY S. TRUMAN

By the President:

DEAN ACHESON,
Secretary of State.

[F. R. Doc. 50-1073; Filed, Feb. 3, 1950; 11:03 a. m.]

TITLE 7—AGRICULTURE

Chapter IX—Production and Marketing Administration (Marketing Agreements and Orders), Department of Agriculture

[Orange Reg. 179]

PART 933—ORANGES, GRAPEFRUIT, AND TANGERINES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.470 *Orange Regulation 179*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, and tangerines grown in the State of Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than February 6, 1950. Shipments of oranges, grown in the State of Florida, have been subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order, since September 12, 1949, and will so continue until February 6, 1950; the recommendation and supporting information for continued regulation subsequent to February 5 was promptly submitted to the Department after an

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THE PRESIDENT

EXECUTIVE AGENCIES

FEDERAL REGISTER

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CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

CODIFICATION GUIDE—Con.

open meeting of the Growers Administrative Committee on January 31; such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time thereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of oranges; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) During the period beginning at 12:01 a. m., e. s. t., February 6, 1950, and ending at 12:01 a. m., e. s. t., July 31, 1950, no handler shall ship:

(i) Any oranges, except Temple oranges, grown in Regulation Area I which grade U. S. No. 1 Russet, U. S. No. 2 Bright, U. S. No. 2, U. S. No. 2 Russet, U. S. No. 3, or lower than U. S. No. 3 grade;

(ii) Any oranges, except Temple oranges, grown in Regulation Area II which grade U. S. No. 2 Russet, U. S. No. 3, or lower than U. S. No. 3 grade;

(iii) Any oranges, except Temple oranges, grown in Regulation Area II which grade U. S. No. 2 or U. S. No. 2 Bright unless such oranges (*a*) are in the same container with oranges which grade at least U. S. No. 1 Russet and (*b*) are not in excess of 50 percent, by count, of the number of all oranges in such container; or

(iv) Any oranges, except Temple oranges, grown in Regulation Area I or Regulation Area II which are of a size smaller than a size that will pack 288 oranges, packed in accordance with the requirements of a standard pack, in a standard nailed box.

(2) As used in this section, the terms "handler," "ship," "Regulation Area I," "Regulation Area II," and "Growers Administrative Committee" shall each have the same meaning as when used in said amended marketing agreement and order; and the terms "U. S. No. 1 Russet," "U. S. No. 2 Bright," "U. S. No. 2," "U. S. No. 2 Russet," "U. S. No. 3," "standard pack," "container," and "standard nailed box" shall each have the same meaning as when used in the revised United States Standards for Oranges (7 CFR 51.192; 14 F. R. 6831).

(3) Shipments of Temple oranges grown in the State of Florida are subject to the provisions of Orange Regulation 177 (7 CFR 933.465; 15 F. R. 52).

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup., 608c)

Done at Washington, D. C., this 2d day of February 1950.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Branch, Production and Marketing Administration.

[F. R. Doc. 50–1032; Filed, Feb. 8, 1950; 8:53 a. m.]

[Tangerine Reg. 93]

PART 933—ORANGES, GRAPEFRUIT, AND TANGERINES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.471 *Tangerine Regulation 93*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, and tangerines grown in the State of Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than February 6, 1950. Shipments of tangerines, grown in the State of Florida, have been subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order, since October 31, 1949, and will so continue until February 6, 1950; the recommendation and supporting information for continued regulation subsequent to February 5 was promptly submitted to the Department after an open meeting of the Growers Administrative Committee on January 31; such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time thereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such tangerines; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of tangerines; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) During the period beginning at 12:01 a. m., e. s. t., February 6, 1950, and ending at 12:01 a. m., e. s. t., February 13, 1950, no handler shall ship:

(i) Any tangerines, grown in the State of Florida, that do not grade at least U. S. No. 1 Bronze; or

(ii) Any tangerines, grown in the State of Florida, that are of a size smaller than a size that will pack a 210 pack of tangerines, packed in accordance with the requirements of a standard pack, in a half-standard box (inside dimensions 9½ x 9½ x 19⅛ inches; capacity 1,726 cubic inches) except that the minimum size of such tangerines shall be $2^{5}/_{16}$ inches with a total tolerance for variations incident to proper sizing of 20 percent, by count of tangerines that are smaller than $2^{5}/_{16}$ inches in diameter of which not more than one-half, or a total of 10 percent by count of the tangerines, are smaller than $2^{1}/_{16}$ inches in diameter.

(2) As used in this section, "handler," "ship," and "Growers Administrative Committee" shall have the same meaning as when used in said amended marketing agreement and order; and "U. S. No. 1 Bronze," "diameter," "210 pack," and "standard pack" shall have the same meaning as when used in the United States Standards for Tangerines (7 CFR 51.416).

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup., 608c)

Done at Washington, D. C., this 2d day of February 1950.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Branch, Production and Marketing Administration.

[F. R. Doc. 50–1033; Filed, Feb. 3, 1950; 8:52 a. m.]

[Grapefruit Reg. 124]

PART 933—ORANGES, GRAPEFRUIT, AND TANGERINES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.472 *Grapefruit Regulation 124*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, and tangerines grown in the State of Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than February 6, 1950. Shipments of grapefruit, grown in the State of Florida, have been subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order, since September 12, 1949, and will so continue until February 6, 1950; the recommendation and supporting information for continued regulation subsequent to February 5 was promptly submitted to the Department after an open meeting of the Growers Administrative Committee on January 31; such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time thereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Grapefruit Regulation 123 (7 CFR 933.462; 14 F. R. 7875) is hereby terminated as of the effective time of this section.

(2) During the period beginning at 12:01 a. m., e. s. t., February 6, 1950, and ending at 12:01 a. m., e. s. t., July 31, 1950, no handler shall ship:

(i) Any grapefruit of any variety, grown in the State of Florida; which do not grade at least U. S. No. 2 Russet;

(ii) Any seeded grapefruit, other than pink grapefruit, grown in the State of Florida, which are of a size smaller than a size that will pack 80 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box;

(iii) Any seedless grapefruit, other than pink grapefruit, grown in the State of Florida, which are of a size smaller than a size that will pack 126 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box; or

(iv) Any pink grapefruit, grown in the State of Florida, which are of a size smaller than a size that will pack 126 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box.

(3) As used in this section, "handler," "variety," "ship," and "Growers Administrative Committee" shall have the same meaning as when used in said amended marketing agreement and order; and "U. S. No. 2 Russet," "standard pack," and "standard nailed box" shall have the same meaning as when used in the revised United States Standards for Grapefruit (7 CFR 51.191; 14 F. R. 6828).

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup., 608c)

Done at Washington, D. C., this 2d day of February 1950.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Branch, Production and Marketing Administration.

[F. R. Doc. 50-1031; Filed, Feb. 3, 1950; 8:53 a. m.]

[Orange Reg. 313]

PART 966—ORANGES GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF SHIPMENTS

§ 966.459 *Orange Regulation 313*—(a) *Findings.* (1) Pursuant to the provisions of Order No. 66, as amended (7 CFR Part 966; 14 F. R. 3614), regulating the handling of oranges grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendation and information submitted by the Orange Administrative Committee, established under the said amended order, and upon other available information, it is hereby found that the limitation of the quantity of such oranges which may be handled, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of oranges, grown in the State of California or in the State of Arizona, are currently subject to regulation pursuant to said amended order; the recommendation and supporting information for regulation during the period specified herein was promptly submitted to the Department after an open meeting of the Orange Administrative Committee on February 2, 1950; such meeting was held, after giving due notice thereof to consider recommendations for regulation, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter specified; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time thereof.

(b) *Order.* (1) The quantity of oranges grown in the State of California or in the State of Arizona which may be handled during the period beginning at 12:01 a. m., P. s. t., February 5, 1950, and ending at 12:01 a. m., P. s. t., February 12, 1950, is hereby fixed as follows:

(i) *Valencia oranges.* (*a*) Prorate District No. 1: No movement;

(*b*) Prorate District No. 2: Unlimited movement;

(*c*) Prorate District No. 3: No movement.

(ii) *Oranges other than Valencia oranges.* (*a*) Prorate District No. 1: Unlimited movement;

(*b*) Prorate District No. 2: 825 carloads;

(*c*) Prorate District No. 3: Unlimited movement.

(2) The prorate base of each handler who has made application therefor, as provided in the said amended order, is hereby fixed in accordance with the prorate base schedule which is attached hereto and made a part hereof by this reference.

(3) As used in this section, "handled," "handler," "varieties," "carloads," and "prorate base" shall have the same meaning as when used in the said amended order; and the terms "Prorate District No. 1," "Prorate District No. 2," and "Prorate District No. 3" shall have the same meaning as given to the respective term in § 966.107 of the current

rules and regulations (14 F. R. 6588) contained in this part.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c)

Done at Washington, D. C., this 3d day of February 1950.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Branch, Production and Marketing Administration.

PRORATE BASE SCHEDULE

[12:01 a. m. Feb. 5, 1950, to 12:01 a. m. Feb. 12, 1950]

ALL ORANGES OTHER THAN VALENCIA ORANGES

Prorate District No. 2

Handler	Prorate base (percent)
Total	100.0000
A. F. G. Alta Loma	.6185
A. F. G. Corona	.0836
A. F. G. Fullerton	.0336
A. F. G. Orange	.0321
A. F. G. Riverside	.7035
A. F. G. Santa Paula	.0364
Eadington Fruit Co	.3800
Hazeltine Packing Co	.1300
Placentia Pioneer Valencia Growers Association	.0662
Signal Fruit Association	1.0468
Azusa Citrus Association	1.0772
Damerel-Allison Co	.9597
Glendora Mutual Orange Association	.4607
Puente Mutual Citrus Association	.0516
Valencia Heights Orchard Association	.1934
Covina Citrus Association	1.2365
Covina Orange Growers Association	.5340
Glendora Citrus Association	.9009
Gold Buckle Association	3.5255
La Verne Orange Association	4.6819
Anaheim Citrus Fruit Association	.0494
Anaheim Valencia Orange Association	.0140
Fullerton Mutual Orange Association	.2102
La Habra Citrus Association	.0923
Orange County Valencia Association	.0115
Orangethorpe Citrus Association	.0190
Yorba Linda Citrus Association, The	.0108
Escondido Orange Association	.4244
Alta Loma Heights Citrus Association	.3073
Citrus Fruit Growers	1.0304
Cucamonga Citrus Association	.3742
Etiwanda Citrus Fruit Association	.1909
Mountain View Fruit Association	.1129
Old Baldy Citrus Association	.3574
Rialto Heights Orange Growers	.5120
Upland Citrus Association	2.2395
Upland Heights Orange Association	1.1937
Consolidated Orange Growers	.0236
Frances Citrus Association	.0032
Garden Grove Citrus Association	.0292
Goldenwest Citrus Association	.0926
Olive Heights Citrus Association	.0369
Santa Ana-Tustin Mutual Citrus Association	.0123
Santiago Orange Growers Association	.1020
Tustin Hills Citrus Association	.0167
Villa Park Orchards Association, The	.0223
Bradford Bros., Inc	.2199
Placentia Cooperative Orange Association	.0154
Placentia Mutual Orange Association	.1546
Placentia Orange Growers Association	0.1802
Yorba Orange Growers Association	.0367
Call Ranch	.5035
Corona Citrus Association	.8967
Jameson Co	.3430
Orange Heights Orange Association	1.6001
Crafton Orange Growers Association	1.5617
East Highlands Citrus Association	.4289
Fontana Citrus Association	.4324
Redlands Heights Groves	.8576
Redlands Orangedale Association	1.0680
Break & Son, Allen	.2366
Bryn Mawr Fruit Growers Association	1.0194
Mission Citrus Association	.9299
Redlands Cooperative Fruit Association	1.7087
Redlands Orange Growers Association	1.0906
Redlands Select Groves	.4230
Rialto Citrus Association	.5393
Rialto Orange Co	.3684
Southern Citrus Association	1.0500
United Citrus Growers	.6308
Zilen Citrus Co	.5576
Andrews Bros. of California	.2898
Arlington Heights Citrus Co	1.0800
Brown Estate, L. V. W	1.7055
Gavilan Citrus Association	1.6785
Highgrove Fruit Association	.6882
Krinard Packing Co	1.8146
McDermont Fruit Co	1.7995
Monte Vista Citrus Association	1.3838
National Orange Co	.9262
Riverside Heights Orange Growers Association	1.1444
Sierra Vista Packing Association	.8746
Victoria Avenue Citrus Association	2.6431
Claremont Citrus Association	.9175
College Heights Orange & Lemon Association	1.7334
Indian Hill Citrus Association	1.0663
Pomona Fruit Growers Exchange	1.6964
Walnut Fruit Growers Association	.4449
West Ontario Citrus Association	1.2632
El Cajon Valley Citrus Association	.2228
Escondido Cooperative Citrus Association	.0711
San Dimas Orange Growers Association	1.0599
Ball & Tweedy Association	.0000
Canoga Citrus Association	.0825
Covina Citrus Association	.0327
North Whittier Heights Citrus Association	.1377
San Fernando Fruit Growers Association	.8627
San Fernando Heights Orange Association	.2179
Sierra Madre-Lamanda Citrus Association	.2553
Camarillo Citrus Association	.0085
Fillmore Citrus Association	.9424
Ojai Orange Association	.7631
Piru Citrus Association	.9133
Rancho Sespe	.0016
Santa Paula Orange Association	.0800
Tapo Citrus Association	.0074
Ventura County Citrus Association	.0233
East Whittier Citrus Association	.0080
Whittier Citrus Association	.1372
Whittier Select Citrus Association	.0126
Anaheim Cooperative Orange Association	.0374
Bryn Mawr Mutual Lemon Association	.5041
Chula Vista Mutual Orange Association	.0889
Euclid Avenue Orange Association	2.8549
Foothill Citrus Union, Inc	0.2384
Fullerton Cooperative Orange Association	.0104
Golden Orange Groves, Inc	.3197
Highland Mutual Groves, Inc	.2689
Index Mutual Groves, Inc	.0039
La Verne Cooperative Citrus Association	3.2821
Mentone Heights Association	.5789
Olive Hillside Groves	.0061
Orange Cooperative Citrus Association	.0326
Redlands Foothill Groves	2.7169
Redlands Mutual Orange Association	1.0572
Ventura County Orange & Lemon Association	.1966
Whittier Mutual Orange & Lemon Association	.0207
Allec Bros	.0034
Babijuice Corp. of California	.4459
Borden Fruit Co	.0359
Cherokee Citrus Co., Inc	1.2238
Chess Co., Meyer W	.4374
Dunning Ranch	.1326
Evans Brothers Packing Co	1.3562
Gold Banner Association	2.1648
Granada Hills Packing Co	.0188
Granada Packing House	1.5666
Hill, Fred A., Packing House	.7624
Knapp Produce Co., Inc	.0160
Orange Belt Fruit Distributors	1.8963
Panno Fruit Co., Carlo	.0922
Paramount Citrus Association	.1931
Placentia Orchard Co	.0743
Riverside Citrus Association	.3128
San Antonio Orchard Co	1.3352
Snyder & Sons Co., W. A	.4924
Stephens, T. F	.1115
Torn Ranch	.0451
Wall, E. T., Growers-Shippers	1.7737
Western Fruit Growers, Inc	3.7082

[F. R. Doc. 50-1074; Filed, Feb. 3, 1950; 11:21 a. m.]

TITLE 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board

Subchapter A—Civil Air Regulations

[Supp. 6]

PART 3—AIRPLANE AIRWORTHINESS; NORMAL, UTILITY, ACROBATIC, AND RESTRICTED-PURPOSE CATEGORIES

MATERIAL CORRECTION FACTORS

Under sections 205 (a), 603, 609, and 901 of the Civil Aeronautics Act of 1938, as amended, the Administrator of Civil Aeronautics is authorized (1) to determine by inspection and reexamination whether aircraft are in a condition for safe operation, (2) to certificate aircraft, (3) to administer and enforce aircraft safety regulations prescribed by the Civil Aeronautics Board, and (4) to adopt such procedures as he deems necessary to carry out these responsibilities.

Acting pursuant to the foregoing authority, and in accordance with section 3 (a) of the Administrative Procedure Act, I hereby adopt the following policies:

§ 3.174–1 *Material correction factors (CAA policies which apply to § 3.174.)* (a) In tests conducted for the purpose of establishing allowable strengths of struc-

tural elements such as sheet, sheet stringer combinations, riveted joints, etc., test results should be reduced to values which would be met by elements of the structure if constructed of materials having properties equal to design allowable values. Material correction factors in this case may be omitted, however, if sufficient test data are obtained to permit a probability analysis showing that 90% or more of the elements will either equal or exceed in strength the selected design allowable values. The number of individual test specimens needed to form a basis of "probability values" cannot be definitely stated but must be decided on the basis of consistency of results; i. e., "spread of results", deviations from mean value, and range of sizes, dimensions of specimens, etc., to be covered. This item should therefore be a matter for decision between the manufacturer and the CAA. (Sections 1.654 and 1.655 of ANC–5a 1949 edition outline two means of accomplishing material corrections in element tests; these methods, however, are by no means considered the only methods available.)

(b) In cases of static or dynamic tests of structural components, no material correction factor is required. The manufacturer, however, should use care to see that the strength of the component tested conservatively represents the strength of subsequent similar components to be used on aircraft to be presented for certification. The manufacturer should, in addition, include in his report of tests of major structural components, a statement substantially as follows:

The strength properties of materials and dimensions of parts used in the structural component(s) tested are such that subsequent components of these types used in aircraft presented for certification will have strengths substantially equal to or exceeding the strengths of the components tested.

(Sec. 205, 52 Stat. 984, as amended by Reorg. Plan IV of 1940, 5 F. R. 2421, 3 CFR, Cum. Supp.; 49 U. S. C. 425. Interprets or applies sec. 601, 52 Stat. 1007, as amended by Reorg. Plans III and IV of 1940, 5 F. R. 2107, 2421, 3 CFR, Cum. Supp.; 49 U. S. C. 551)

These policies shall become effective upon publication in the FEDERAL REGISTER.

[SEAL] DONALD W. NYROP,
Acting Administrator of Civil Aeronautics.

[F. R. Doc. 50–975; Filed, Feb. 3, 1950; 8:49 a. m.]

[Supp. 9]

PART 4b—AIRPLANE AIRWORTHINESS; TRANSPORT CATEGORIES

PORTABLE WATER-SOLUTION-TYPE FIRE EXTINGUISHERS

Under sections 205 (a), 603, 605, 609, and 901 of the Civil Aeronautics Act of 1938, as amended, the Administrator of Civil Aeronautics is authorized (1) to determine by inspection and reexamination whether aircraft are in a condition for safe operation, (2) to certificate aircraft, (3) to administer and enforce aircraft safety regulations prescribed by the Civil Aeronautics Board, and (4) to adopt such procedures as he deems necessary to carry out these responsibilities.

Acting pursuant to the foregoing authority, and in accordance with section 3 (a) of the Administrative Procedure Act, I hereby adopt the following policies:

§ 4b.799–1 *Portable water-solution-type extinguishers (CAA policies which apply to § 4b.799).*—(a) *General.* It has been established that water-solution-type hand fire extinguishers are more suitable for controlling and extinguishing Class A fires (fires in seat upholstery, curtains, floor coverings, clothing, paper, etc.) than are other types designed primarily for extinguishing Class B fires (fires in inflammable liquids, greases, etc.) or Class C fires (electrical fires, which require non-conducting extinguishing agents).

(b) *Installation.* Water-solution-type portable fire extinguishers which comply with the provisions of Technical Standard Order TSO–C19, the performance requirements for which are based on SAE Aeronautical Standard AS 245, dated November 1, 1948, may be used to meet the minimum requirements of the Civil Air Regulations for cabin fire protection in civil aircraft on the following basis:

(1) The portable fire extinguisher required for use by the pilot or copilot in the cockpit should continue to be of the carbon dioxide, carbon tetrachloride, dry chemical, or an equivalent type, since Class B and Class C fires are considered to be the primary hazard in pilot compartments. Such an extinguisher should have a minimum capacity, if carbon tetrachloride, of 1 quart, or, if carbon dioxide, of 2 pounds.

(2) Other portable fire extinguishers may be of the water-solution-type, unless the primary hazard is considered to require Class B or Class C extinguishing equipment, e. g., possible grease fires in the galley (Class B fires), fires in the electrical or radio installations, etc. (Class C fires).

(3) When substitution of portable water-solution-type fire extinguishers for other types of extinguishers is contemplated in the design of new aircraft or as a replacement in aircraft already in service, it should be on a minimum basis of one 1⅜-quart water-solution-type fire extinguisher conforming to SAE Aeronautical Standard AS 245 for each 1-quart-capacity carbon tetrachloride unit, each 2-pound-capacity carbon dioxide extinguisher, or for each 2 pounds of dry-chemical extinguishing agent.

(c) In any event, there is no objection to installation of portable water-solution-type fire extinguishers in addition to minimum requirements.

(Sec. 205, 52 Stat. 984, as amended by Reorg. Plan IV of 1940, 5 F. R. 2421, 3 CFR, Cum. Supp.: 49 U. S. C. 425. Interprets or applies secs. 601, 603, 52 Stat. 1007, 1009, as amended by Reorg. Plans III and IV of 1940, 5 F. R. 2107, 2421, 3 CFR, Cum. Supp.; 49 U. S. C. 551, 553)

These policies shall become effective upon publication in the FEDERAL REGISTER.

[SEAL] DONALD W. NYROP,
Acting Administrator of Civil Aeronautics.

[F. R. Doc. 50–981; Filed, Feb. 8, 1950; 8:51 a. m.]

[Supp. 7]

PART 41—CERTIFICATION AND OPERATION RULES FOR SCHEDULED AIR CARRIER OPERATIONS OUTSIDE CONTINENTAL LIMITS OF THE UNITED STATES

AIR CARRIER COCKPIT CHECK LIST; PILOT'S COMPARTMENT

Under sections 205 (a), 604, 605, and 901 of the Civil Aeronautics Act of 1938, as amended, the Administrator of Civil Aeronautics is authorized (1) to determine by investigation whether air carriers are properly and adequately equipped and maintained and are able to conduct safe operations, (2) to certificate air carriers, (3) to administer and enforce air carrier safety regulations prescribed by the Civil Aeronautics Board, and (4) to adopt such procedures as he deems necessary to carry out these responsibilities.

Acting pursuant to the foregoing authority, and in accordance with section 3 (a) of the Administrative Procedure Act, I hereby adopt the following policies and interpretations:

§ 41.44–1 *Air carrier cockpit check list (CAA policies which apply to § 41.44).* An air carrier cockpit check list will be approved by the Administrator in accordance with the policies set forth in CAM 61.63–1.

§ 41.121–1 *Pilot's compartment (CAA interpretations which apply to § 41.121).* Sections 4a.509 and 4b.421 (d) of the Civil Air Regulations provide that a door or an adequate openable window shall be provided between the pilot compartment and the passenger compartment. The "pilot compartment", as used in § 41.121 of the Civil Air Regulations, will be regarded by the Administrator as all of that area forward of such door or window.

(Sec. 205, 52 Stat. 984, as amended by Reorg. Plan IV of 1940, 5 F. R. 2421, 3 CFR, Cum. Supp.; 49 U. S. C. 425. Interpret or apply secs. 601, 602, 604, 52 Stat. 1007, 1008, 1010, as amended by Reorg. Plans III and IV of 1940, 5 F. R. 2107, 2421, 3 CFR, Cum. Supp.; 49 U. S. C. 551, 552, 554)

These policies and interpretations shall become effective upon publication in the FEDERAL REGISTER.

[SEAL] DONALD W. NYROP,
Acting Administrator of Civil Aeronautics.

[F. R. Doc. 50–980; Filed, Feb. 3, 1950; 8:51 a. m.]

[Supp. 3]

PART 50—AIRMAN AGENCY CERTIFICATES

AIRCRAFT REQUIREMENTS FOR APPROVED AIRMAN AGENCY COMMERCIAL FLYING SCHOOLS

Under sections 205 (a), 607, 609, and 901 of the Civil Aeronautics Act of 1938, as amended, the Administrator of Civil Aeronautics is empowered (1) to provide for the examination and rating of (a) civilian schools giving instruction in flying or in the repair, alteration, maintenance, and overhaul of aircraft, aircraft engines, propellers, and appliances, as to the adequacy of the course of instruction, the suitability and airworthiness of the equipment, and the competency of the instructors, (b) repair stations or shops for the repair, alteration, maintenance, and overhaul of aircraft, aircraft engines, propellers, or appliances, as to the adequacy and suitability of the equipment, facilities, and materials for, and methods of, repair, alteration, maintenance, and overhaul of aircraft, aircraft engines, propellers, and appliances, and the competency of those engaged in the work or giving any instruction therein, and (c) such other air agencies as may, in his opinion, be necessary in the interest of the public; (2) to issue certificates for such schools, repair stations, and other agencies; (3) to administer and enforce air agency safety regulations prescribed by the Civil Aeronautics Board; and (4) to adopt such procedures as he deems necessary to carry out these responsibilities.

Acting pursuant to the foregoing authority, and in accordance with section 3 (a) of the Administrative Procedure Act, I hereby adopt the following policies:

§ 50.11–2 *Aircraft requirements for approved airman agency commercial flying schools (CAA policies which apply to § 50.11 (d))*—(a) *General.* The policies set forth herein will be applied by the Civil Aeronautics Administration to govern the kinds of training airplanes used by commercial flying schools to satisfy § 50.11 (d) of the Civil Air Regulations. This change in policy is believed necessary because of changes in design and flight characteristics on present production airplanes, which have obsoleted the present wing loading, horsepower loading, and minimum horsepower requirements previously necessary to assure that a commercial pilot trainee becomes familiar with the operation of airplanes possessing varying flight characteristics.

Today's design trend of personal aircraft narrows the area of flight characteristic change between single-engine airplanes of different horsepower and gross weight configuration.

This policy is also a further step in delegating the responsibility for correct pilot training to the operators of approved airman agency flying schools.

(b) *Flight equipment for commercial flying school rating.* (1) An applicant for a commercial flying school rating must possess flight equipment sufficient to provide training in aircraft of over 50 horsepower with both tandem and side-by-side seating arrangements. The aircraft required may be owned or registered in the name of the applicant or under lease, the terms of which shall be satisfactory to the Administrator.

(2) At least one of the airplanes provided for instruction must be equipped with wing flaps, two-way radio, controllable propeller, and a manifold pressure gauge.

(3) At least one airplane must be provided which is properly equipped for visual night flying as set forth in Part 43 of the Civil Air Regulations.

(4) An applicant desiring to utilize only helicopters in commercial pilot training must provide a helicopter equipped for night flying as set forth in Part 43 of the Civil Air Regulations.

(Sec. 205, 52 Stat. 984, as amended by Reorg. Plan IV of 1940, 5 F. R. 2421, 3 CFR, Cum. Supp.; 49 U. S. C. 425. Interprets or applies sec. 601, 52 Stat. 1007, as amended by Reorg. Plans III and IV of 1940, 5 F. R. 2107, 2421, 3 CFR, Cum. Supp.; 49 U. S. C. 551)

These policies shall become effective upon publication in the FEDERAL REGISTER.

[SEAL] DONALD W. NYROP,
Acting Administrator of Civil Aeronautics.

[F. R. Doc. 50–978; Filed, Feb. 3, 1950; 8:49 a. m.]

[Supp. 1]

PART 52—REPAIR STATION RATING

FOREIGN REPAIR STATION CERTIFICATE AND RATING

Under sections 205 (a), 607, 609, and 901 of the Civil Aeronautics Act of 1938, as amended, the Administrator of Civil Aeronautics is empowered (1) to provide for the examination and rating of repair stations or shops for the repair, alteration, maintenance, and overhaul of aircraft, aircraft engines, propellers, or appliances, as to the adequacy and suitability of the equipment, facilities, and materials for, and methods of, repair, alteration, maintenance, and overhaul of aircraft, aircraft engines, propellers, and appliances, and the competency of those engaged in the work or giving any instruction therein; (2) to issue certificates for such repair stations; (3) to administer and enforce air agency safety regulations prescribed by the Civil Aeronautics Board, and (4) to adopt such procedures as he deems necessary to carry out these responsibilities.

Acting pursuant to the foregoing authority, and in accordance with section 3 (a) of the Administrative Procedure Act, I hereby adopt the following policies:

§ 52.18–1 *Foreign repair station certificate and ratings (CAA policies which apply to § 52.18)*—(a) *Application.* Application shall be made as prescribed in § 52.10, and shall be accompanied, in a suitably bound form, by a description of the applicant's facilities including shop space, personnel, stock inspection control, the inspection system and a listing of the tools and equipment necessary for the type of work for which approval is desired. Photographs may be used to supplement this information. This file will then be submitted to the CAA representative assigned to the area in which the applicant's repair station is located.

(b) *Requirements relating to personnel and records.* (1) An applicant is not required to utilize personnel who hold U. S. mechanic certificates. However, at the time of application, the applicant must submit a roster of supervisory personnel holding a mechanic's certificate or license issued by the applicant's civil aviation authority. The roster should include a statement by the applicant attesting to the validity of the certificates or licenses. In addition, the applicant must furnish a copy of the requirements for mechanic's certificates or licenses as promulgated by his civil aviation authority. Such requirements must be at least equal to the minimums required by the CAA for a similar mechanic's certificate in the U. S. In addition, supervising or other personnel of the applicant must be familiar with the inspection, maintenance and repair techniques of the particular U. S. aircraft, engine, propeller or other component being serviced and for which a rating is desired.

(2) The foreign repair station will record all major repairs and alterations in duplicate on the Repair and Alteration Form (Form ACA 337), which will be furnished by the CAA. The original will be given to the owner of the aircraft, while the copy will be transmitted to the local CAA representative. In addition, a record will be kept of all other maintenance and repair work on U. S. registered aircraft. This record may be in a form convenient to the repair station and must be available to the local CAA representative. It is required that all records submitted to the representative be written in English.

(c) *Ratings.* It is required that the applicant state specifically on the application, the type and scope of work for which a rating is desired. A rating will not be granted where the applicant cannot show substantial previous experience on that type aircraft or components. In lieu of substantial previous experience, an applicant may be granted a rating if he submits evidence that personnel responsible for the airworthiness of work performed have attended a comprehensive course of training on the article involved. Such training may be obtained from the manufacturer of the article or from other sources acceptable to the Administrator.

(d) *Rating specifications.* If the applicant is approved to operate as a foreign repair station, a Rating Specification will be attached to, and be made a part of, the repair station certificate. The Rating Specification will set forth the privileges and limitations accorded the foreign repair station in addition to other pertinent details. The Rating Specification may be amended or revised upon the written request of the foreign repair station.

NOTE: The following examples are given as typical ratings:

(1) Modification and major repair to Douglas DC–4 airframe.

(2) Modification and repair to airframe and powerplant of Lockheed 749 less instrumentation.

(3) Major overhaul of P & W, R-2000-7.
(4) Periodic inspection only on Douglas DC-6 airframe and powerplant.
(5) Engine build up only, for DC-3—DC-4. Major overhaul of starters and generators.

(e) *Duration of foreign repair station certificate and rating.* A foreign repair station certificate expires at the end of 6 months. If a foreign repair station so desires, a new certificate and rating will be issued at the expiration of the 6-months' period, provided that the terms under which the repair station obtained an original certificate are complied with. The request for a renewal of the certificate must be made in writing and forwarded through the local CAA representative no less than 30 days preceding the expiration date of the current certificate.

(f) *Inspection of foreign repair station.* The holder of a foreign repair station certificate shall permit an authorized representative of the CAA to make an inspection of such a repair station at any time. The facilities inspected will be limited to those coming under the terms of the foreign repair station certificate.

(g) *Facilities.* A foreign repair station is required to have adequate facilities to successfully perform airworthy work on U. S. registered aircraft within the scope applied for at the time of application. Such facilities include competent personnel, proper housing and shop space, hand and machine tools, fixtures, jigs and other equipment required to service the article for which a rating is desired.

(h) *Technical library.* A foreign repair station is required to maintain a technical library in a current condition. Such a library will contain all pertinent U. S. Civil Air Regulations, Civil Aeronautics Manuals, Airworthiness Directives and complete manufacturers' service instructions for the particular aircraft, engine or component for which the repair station is rated, including current supplemental service instructions. Supervisory personnel must understand the contents of the library, to the satisfaction of the CAA representative, so as to assure compliance with the pertinent Civil Air Regulations.

(Secs. 205, 52 Stat. 984, as amended by Reorg. Plan IV of 1940, 5 F. R. 2421, 3 CFR, Cum. Supp.; 49 U. S. C. 425. Interprets or applies secs. 601, 607, 52 Stat. 1007, 1011, as amended by Reorg. Plans III and IV of 1940, 5 F. R. 2107, 2421, 3 CFR, Cum. Supp.; 49 U. S. C. 551, 557)

These policies shall become effective upon publication in the FEDERAL REGISTER.

[SEAL] DONALD W. NYROP,
Acting Administrator of Civil Aeronautics.

[F. R. Doc. 50-977; Filed, Feb. 8, 1950; 8:49 a. m.]

[Supp. 8]

PART 61—SCHEDULED AIR CARRIER RULES

AIR CARRIER COCKPIT CHECK LIST; PILOT COMPARTMENT

Under sections 205 (a), 604, 605, and 901 of the Civil Aeronautics Act of 1938, as amended, the Administrator of Civil Aeronautics is authorized (1) to determine by investigation whether air carriers are properly and adequately equipped and maintained and are able to conduct safe operations, (2) to certificate air carriers, (3) to administer and enforce air carrier safety regulations prescribed by the Civil Aeronautics Board, and (4) to adopt such procedures as he deems necessary to carry out these responsibilities.

Acting pursuant to the foregoing authority, and in accordance with section 3 (a) of the Administrative Procedure Act, I hereby adopt the following policies and interpretations:

§ 61.63-1 *Air carrier cockpit check list (CAA policies which apply to § 61.63)*—(a) *General.* The policies hereinafter set forth are issued pursuant to § 61.63 (a) so as to provide a guide in the approval of an air carrier cockpit check list by the Administrator and to assist an air carrier in providing a cockpit check list which will meet with such approval and will comply with the provisions of § 61.63 (b).

The check list which follows has been prepared in general terms and is considered a normal check list for compliance with § 61.63 except that those items not applicable to a particular aircraft may be deleted and the order of arrangement for the individual items may be changed at the discretion of the air carrier. The check list provided by an air carrier shall include all applicable items but will not necessarily be limited thereto.

PRIOR TO STARTING ENGINE

Fuel System:
- Quantity—checked
- Proper tank selection—checked
- Mixtures—as required
- Fuel booster pumps—as required
- Cross feeds—as required

Hydraulic system: [1]
- Brakes—set.

Electrical system:
- Battery switch—proper position.

PRIOR TO TAKE-OFF

Weight and balance:
- Pilot is aware of weights and take-off limitations.

Fuel system: [1]
- Quantity—rechecked.
- Proper tank selection—rechecked.
- Mixtures—take-off position.
- Fuel booster pumps—as required.
- Cross feeds—as required.

Hydraulic system: [1]
- Hydraulic pressures and quantity—checked.
- Brakes—checked.
- Hydraulic selector valves—checked.

Anti-icing and de-icing equipment.[1] Checked and set.

Electrical system:
- Battery switch—proper position.
- Invertors—as required.
- Ignition—checked.
- Generators—checked.
- Radio—checked.

Power plants and propellers: [1]
- Propellers—checked and set in take-off position.
- All engines—checked for proper functioning and required power.

Power plants and propellers [1]—Continued
- Super chargers—checked and set in proper take-off position.

Heaters. Checked and set.

Instruments—Engine:
- Oil—quantity, temperature and pressure—normal for take-off.
- Fuel pressure—normal for take-off.
- Carburetor — temperature — normal for take-off.
- Cylinder head—temperature—checked.

Instruments—flight:
- Static and vacuum selectors—checked.
- Directional gyro—set.
- Altimeter—set.
- Horizon—uncaged.
- Turn and bank—checked.
- Clock—set.

Pressurization.[1] Checked.

Flaps: [1]
- Wing flaps—take-off position.
- Cowl flaps—take-off position.

Controls: [1]
- Auto pilot—off.
- Trim tabs—set for take-off.
- Gust locks—off.
- Free and tested for through full limit of travel.

PRIOR TO LANDING

Fuel system: [1]
- Proper tank selection—checked.
- Mixtures—landing position.
- Fuel booster pumps—as required.
- Cross feeds—as required.

Weight and balance:
- Maximum landing gross weight—checked.

Hydraulic system: [1]
- Hydraulic pressure—checked.
- Brakes—checked and off.
- Hydraulic selector valves—checked.

Anti-icing and de-icing equipment [1]—checked.

Power plants and propellers:
- Propellers—as required.
- Super chargers—as required.
- Manual reverse pitch actuator or indicator [1]—checked.

Heaters.[1] Checked.

Instruments:
- Static and vacuum selectors—checked.
- Altitude—set.
- Directional gyro—set.

Pressurization.[1] Checked.

Controls:
- Auto pilot—off.
- Trim tabs—as desired.

Landing gear: [1]
- Down and locked—checked.

Flaps: [1]
- Wing flaps—as desired.
- Cowl flaps—as desired.

POWER-PLANT EMERGENCIES

Fuel system:
- Mixtures—idle cut-off on dead engine—required position on all others.
- Fuel selector valve—dead engine—off.
- Fuel booster pumps—dead engine—off.
- Cross feeds—as required.
- Throttle—dead engine—closed.

Hydraulic system:
- Hydraulic selector valve—set on proper engine.
- Hydraulic pressures—checked.
- Brakes—checked.
- Ignition—off—dead engine.
- Generators—off—dead engine.

Power plants and propellers:
- Propellers—Low r. p. m. and feathered on dead engine—set as required on all live engines.
- Engines—All live engines set for proper functioning and required power.
- Super chargers—checked and set in proper position.

[1] Items thus marked will be double-checked, such as by challenge and response, or positively checked, such as by a mechanical method.

Heaters. Checked and set in safe operation position.
Instruments:
Engine—oil temperature and pressure checked.
Engine—fuel supply and pressure checked.
Carburetor—temperature checked.
Cylinder head—temperature checked.
Flight instruments. Checked and reset if necessary.
Pressurization. Checked.

§ 61.304–1 *Pilot compartment (CAA interpretations which apply to § 61.304)*—Sections 4a.509 and 4b.421 (d) of the Civil Air Regulations provide that a door or an adequate openable window shall be provided between the pilot compartment and the passenger compartment. The "pilot compartment", as used in § 61.304 of the Civil Air Regulations, will be regarded by the Administrator as all of that area forward of such door or window.

(Sec. 205, 52 Stat. 984, as amended by Reorg. Plan IV of 1940, 5 F. R. 2421, 3 CFR, Cum. Supp.; 49 U. S. C. 425. Interpret or apply secs. 601, 604, 605, 52 Stat. 1007, 1010, as amended by Reorg. Plans III and IV of 1940, 5 F. R. 2107, 2421, 3 CFR, Cum. Supp.; 49 U. S. C. 551, 554, 555)

These policies and interpretations shall become effective upon publication in the FEDERAL REGISTER.

[SEAL] DONALD W. NYROP,
Acting Administrator of Civil Aeronautics.

[F. R. Doc. 50–976; Filed, Feb. 3, 1950; 8:49 a. m.]

TITLE 26—INTERNAL REVENUE

Chapter I—Bureau of Internal Revenue, Department of the Treasury

Subchapter C—Miscellaneous Excise Taxes

[T. D. 5769]

PART 192—FERMENTED MALT LIQUOR

MISCELLANEOUS AMENDMENTS

Correction

In Federal Register Document 50–841, published at page 501 of the issue for Tuesday, January 31, 1950, the designation "§ 192.3" and the reference to § 192.3 as they appear in amendatory paragraph 4 should read "§ 192.1."

TITLE 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

Subchapter B—Statements of General Policy or Interpretation Not Directly Related to Regulations

PART 778—OVERTIME COMPENSATION

Sec.
778.0 Introductory statement.
778.1 Relation to other laws.

THE OVERTIME PAY REQUIREMENTS

778.2 The 40-hour maximum.
778.3 Computing overtime pay based on the "regular rate"; definition.

WHAT PAYMENTS ARE EXCLUDED FROM THE "REGULAR RATE"

778.4 The statutory provisions.
778.5 Extra compensation paid for overtime.
778.6 Bonuses.
778.7 Payments not for hours worked.
778.8 Talent fees in the radio and television industry.

SPECIAL PROBLEMS

778.9 Reduction in workweek schedule with no change in pay.
778.10 Change in the beginning of the workweek.
778.11 Retroactive pay increases.
778.12 How deductions affect the regular rate.
778.13 Prizes as bonuses.
778.14 Lump sum attributed to overtime.
778.15 "Task" basis of payment.
778.16 Effect of failure to count or pay for certain working hours.
778.17 Effect of paying for but not counting certain hours.

EXCEPTIONS FROM THE REGULAR RATE PRINCIPLES

778.18 Guaranteed compensation which includes overtime pay (sec. 7 (e)).
778.19 Computing overtime pay on the rate applicable to the type of work performed in overtime hours (sec. 7 (f) (1) and (2)).
778.20 Computing overtime pay on an "established" rate (sec. 7 (f) (3)).

PAY PLANS WHICH CIRCUMVENT THE ACT

778.21 Artificial regular rates.
778.22 The "split-day" plan.
778.23 Pseudo-bonuses.

MISCELLANEOUS

778.24 Veterans' subsistence allowances.
778.25 Special overtime provisions under section 7 (b).

EFFECTIVE DATE; RETROACTIVITY

778.26 Effective date.
778.27 Retroactive effect.

AUTHORITY: §§ 778.0 to 778.27 issued under 52 Stat. 1060, as amended; 29 U. S. C. and Sup. 201 et seq.

§ 778.0 *Introductory statement*—(a) *Scope and significance of bulletin.* The Fair Labor Standards Act of 1938, as amended [1] (hereinafter referred to as the act), requires that no employer shall employ any of his employees (who is engaged in commerce or in the production of goods for commerce and who is not exempt from the overtime provisions pursuant to one or more of the specific exemptions provided in the act) for a workweek longer than 40 hours unless such employee receives compensation for his employment in excess of 40 hours at a rate not less than one and one-half times the regular rate at which he is employed. What constitutes proper overtime compensation must be ascertained in the light of the definition of "regular rate" as well as other new provisions relating to overtime set forth in the act as amended by the Fair Labor Standards Amendments of 1949,[2] giving due regard to authoritative interpretations by the courts and to the legislative history of the act, as amended. Interpretations of the Administrator of the Wage and Hour Division with respect to overtime compensation are set forth herein to provide "a practical guide to employers and employees as to how the office representing the public interest in the enforcement of the law will seek to apply it."[3] These interpretations, with respect to the maximum hours and overtime provisions of the act, indicate the construction of the law which the Administrator believes to be correct and which will guide him in the performance of his administrative duties under the act unless and until he is otherwise directed by authoritative decisions of the courts or concludes, upon reexamination of an interpretation, that it is incorrect.

Under the Portal-to-Portal Act of 1947,[4] interpretations of the Administrator may, under certain circumstances, be controlling in determining the rights and liabilities of employers and employees. The interpretations contained in this bulletin are interpretations on which reliance may be placed as provided in section 10 of the Portal-to-Portal Act so long as they remain effective and are not modified, amended, rescinded, or determined by judicial authority to be incorrect. However, the omission to discuss a particular problem in this bulletin or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Administrator with respect to such problem or to constitute an administrative interpretation or practice or enforcement policy.

(b) *Coverage and exemptions not discussed.* This bulletin does not deal with the general coverage of the act or various specific exemptions provided in the statute, under which certain employees within the general coverage of the wage and hours provisions are wholly or partially excluded from the protection of the act's minimum-wage and overtime-pay requirements. Some of these exemptions are self-executing; others call for definitions or other action by the Administrator. Regulations and interpretations relating to general coverage and specific exemptions may be found in other parts of this chapter.

(c) *Earlier interpretations superseded.* All general and specific interpretations issued prior to August 11, 1949, with respect to the overtime provisions of the act were rescinded and withdrawn by § 778.3 of the general statement on this subject, published in the FEDERAL REGISTER on that date as Part 778 of this chapter to the extent that they were inconsistent or in conflict with the principles stated therein.[5] To the extent

[1] Pub. No. 718, 75th Cong., 3d sess. (52 Stat. 1060), as amended by the act of June 26, 1940 (Pub. Res. No. 38, 76th Cong., 3d sess.); by Reorganization Plan No. 2 (60 Stat. 1095), effective July 16, 1946; by the Portal-to-Portal Act of 1947, approved May 14, 1947 (61 Stat. 84); and by the Fair Labor Standards Amendments of 1949, approved October 26, 1949 (Public Law 393, 81st Cong., 1st sess., 63 Stat. 910).

[2] Public Law 393, 81st Cong., 1st sess. (63 Stat. 910). These amendments, effective January 25, 1950, leave the existing law unchanged except as to provisions specifically amended and the addition of certain new provisions. Section 7 of the act was specifically amended as explained herein. The amendments made include the addition of the new subsections 7 (d), (e), (f) and (g).

[3] Skidmore v. Swift & Co., 323 U. S. 134.

[4] Public Law 49, 80th Cong., 1st sess. (61 Stat. 84), discussed in Part 790 of this chapter.

[5] 14 F. R. 4946. Certain prior interpretations were superseded earlier as explained in statements published in the FEDERAL REGISTER on August 6, 1948, 14 F. R. 4534, and June 8, 1949, F. R. 3077.

that interpretations contained in such general statement or in releases, opinion letters, and other statements issued on or after August 11, 1949, are inconsistent with the provisions of the Fair Labor Standards Amendments of 1949, they do not continue in effect after January 24, 1950.[6] Effective on January 25, 1950, this interpretative bulletin (§§ 778.0–778.27 of this part) replaces and supersedes the general statement previously published as Part 778 of this chapter, which statement is withdrawn. Effective on January 25, 1950, all other administrative rulings, interpretations, practices and enforcement policies relating to the overtime provisions of the act and not withdrawn prior to such date are, to the extent that they are inconsistent with or in conflict with the principles stated in this interpretative bulletin, rescinded and withdrawn.

§ 778.1 *Relation to other laws.* Various Federal, State and local laws require the payment of minimum hourly, daily or weekly wages different from the minimum set forth in the Fair Labor Standards Act, and the payment of overtime compensation computed on bases different from those set forth in the Fair Labor Standards Act. Where such legislation is applicable and does not contravene the requirements of the Fair Labor Standards Act, nothing in the act, the regulations or the interpretation announced by the Administrator should be taken to override or nullify the provisions of these laws. Compliance with other applicable legislation does not excuse noncompliance with the Fair Labor Standards Act. Where a higher minimum wage than that set in the Fair Labor Standards Act is applicable to an employee by virtue of such other legislation, the regular rate of the employee, as the term is used in the Fair Labor Standards Act, cannot be lower than such applicable minimum, for the words "regular rate at which he is employed" as used in section 7 must be construed to mean the regular rate at which he is lawfully employed.

THE OVERTIME PAY REQUIREMENTS

§ 778.2 *The 40-hour maximum*—(a) *The statutory requirements.* Section 7 of the Fair Labor Standards Act deals with maximum hours and overtime compensation for employees who are covered by the act and are not exempt from its overtime requirements. Section 7 (a) provides that an employer may not employ any such employee for a workweek longer than 40 hours "unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed." The term "regular rate" is defined in section 7 (d) "to include all remuneration for employment paid to, or on behalf of, the employee" except payments of seven types which are specifically described and enumerated. These seven types of payments will hereafter be referred to as "statutory exclusions."[7]

(b) *The nature of statutory overtime limitations.* It is clear that there is no absolute limitation in section 7 of the Fair Labor Standards Act on the number of hours that an employee may work in any workweek. If he is paid time and a half his regular rate for the overtime hours, he may work as many hours a week as he and his employer sees fit. Section 7 contains no requirement for the payment of overtime compensation except for hours in excess of 40 in the workweek. It does not require that an employee be paid overtime compensation for hours in excess of eight per day, or for work on Saturdays, Sundays, holidays or regular days of rest. If no more than a total of 40 hours is actually worked in the workweek, overtime compensation need not be paid. Nothing in the act, however, will relieve an employer of any obligation he may have assumed by contract or of any obligation imposed by other Federal or State law to pay premium rates for work in excess of a daily standard or for work on Saturdays, Sundays, holidays, or other periods outside of or in excess of the normal or regular workweek or workday.[8]

(c) *The workweek.* If in any workweek an employee is covered by the act and is not exempt from its overtime-pay requirements, the employer must total all the hours worked by the employee for him in that workweek (even though two or more unrelated job assignments may have been performed), and pay overtime compensation for each hour worked in excess of 40 in the workweek. An employee's workweek is a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. For purposes of computing pay due under the Fair Labor Standards Act, the workweek may be established for the plant as a whole or different workweeks may be established for different employees or group of employees within the plant. Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of hours worked by him. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of the act.[9]

(d) *Each workweek stands alone.* The act takes a single workweek as its standard and does not permit averaging of hours over two or more weeks. Thus, if an employee works 30 hours one week and 50 hours the next, he must receive overtime compensation for the 10 overtime hours worked in the second week, even though the average number of hours worked in the two weeks is 40. This is true regardless of whether the employee works on a standard or swing-shift schedule and regardless of whether he is paid on a daily, weekly, biweekly, monthly or other basis. The rule is also applicable to pieceworkers. It is therefore necessary to determine the hours worked and the compensation earned by pieceworkers on a weekly basis.

(e) *Time of payment.* There is, however, no requirement that overtime compensation be paid weekly. Overtime compensation earned in a particular workweek must be paid on the regular pay day for the period in which such workweek ends.[10] Where retroactive wage increases are made, retroactive overtime compensation is due at the time the increase is paid.[11]

§ 778.3 *Computing overtime pay based on the "regular rate"; definition*—(a) *"Regular rate" distinguished from "minimum rate."* Overtime must be compensated at a rate not less than one and one-half times the regular rate at which the employee is actually employed. The regular rate of pay at which the employee is employed may not be less than the statutory minimum.[12] If the employee's regular rate of pay is higher than the statutory minimum, his overtime compensation must be computed at a rate not less than time and one-half based on such higher rate.

(b) *The "regular rate" is an hourly rate.* The "regular rate" under the Fair Labor Standards Act is a rate per hour. The act does not require employers to compensate employees on an hourly rate basis; their earnings may be determined on a piece-rate, salary, commission or other basis, but in such case the overtime compensation due to em-

[6] Section 16 (c) of the Fair Labor Standards Amendments of 1949 (63 Stat. 910) provides:

Any order, regulation, or interpretation of the Administrator of the Wage and Hour Division or of the Secretary of Labor, and any agreement entered into by the Administrator or the Secretary, in effect under the provisions of the Fair Labor Standards Act of 1938, as amended, on the effective date of this act, shall remain in effect as an order, regulation, interpretation, or agreement of the Administrator or the Secretary, as the case may be, pursuant to this act, except to the extent that any such order, regulation, interpretation, or agreement may be inconsistent with the provisions of this act, or may from time to time be amended, modified, or rescinded by the Administrator or the Secretary, as the case may be, in accordance with the provisions of this act.

[7] These statutory exclusions are set forth in § 778.4 and discussed in §§ 778.4–778.8. Exceptions from the overtime requirements of section 7 (a) are set forth in subsections 7 (e) and 7 (f) of the act and discussed herein in §§ 778.18, 778.19 and 778.20.

[8] The effect of making such payments is discussed in §§ 778.5 and 778.7 (d).

[9] For a discussion of the proper method of computing overtime pay in a period in which a change in the time of commencement of the workweek is made, see § 778.10.

[10] When the correct amount of overtime compensation cannot be determined until some time after the regular pay period, the requirements of the act will be satisfied if the employer pays the excess overtime compensation as soon after the regular pay period as is practicable. Payment may not be delayed for a period longer than is reasonably necessary for the employer to compute and arrange for payment of the amount due and in no event may payment be delayed beyond the next pay day after such computation can be made.

[11] See § 778.11. For a discussion of overtime payments due because of increases by way of bonuses see § 778.6 (b).

[12] Except as to workers specially provided for in section 14 and workers in Puerto Rico and the Virgin Islands covered by wage orders issued by the Administrator pursuant to section 8 of the act, the statutory minimum is 75 cents per hour.

ployees must be computed on the basis of the hourly rate derived therefrom and, therefore, it is necessary to compute the regular hourly rate of such employees during each workweek.[13] The regular hourly rate of pay of an employee is determined by dividing his total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by him in that workweek for which such compensation was paid. A few examples of the proper method of determining the regular rate of pay in particular instances may be helpful:

(1) *Hourly rate employee.* If the employee is employed solely on the basis of a single hourly rate, the hourly rate is his "regular rate." For his overtime work he must be paid, in addition to his straight-time hourly earnings, a sum determined by multiplying one-half the hourly rate by the number of hours worked in excess of 40 in the week. Thus a $1.00 hourly rate will bring, for an employee who works 46 hours, a total weekly wage of $49.00 (46 hours @ $1 plus 6 hours @ 50 cents). In other words the employee is entitled to be paid an amount equal to $1 an hour for 40 hours and $1.50 an hour for the 6 hours of overtime, or a total of $49.

If, in addition to the earnings at the hourly rate, a production bonus of $4.60 is paid, the regular hourly rate of pay is $1.10 an hour (46 hours @ $1 yields $46. The addition of the $4.60 bonus makes a total of $50.60; this total divided by 46 hours yields a rate of $1.10). The employee is then entitled to be paid a total wage of $53.90 for 46 hours (46 hours @ $1.10 plus 6 hours @ 55 cents or 40 hours @ $1.10 plus 6 hours @ $1.65).

(2) *Pieceworker.* When an employee is employed on a piece rate basis, his regular hourly rate of pay is computed by adding together his total weekly earnings from piece rates and all other sources (such as production bonuses) and any sums paid for waiting time or other hours worked (except statutory exclusions). This sum is then divided by the number of hours worked in the week for which such compensation was paid to yield the pieceworker's "regular rate" for that week. For his overtime work the pieceworker is entitled to be paid, in addition to his total weekly earnings, a sum equivalent to one-half this regular rate of pay multiplied by the number of hours worked in excess of 40 in the week.[14] Only additional half-time pay is required in such cases since the employee has already received straight-time compensation at piece rates for all hours worked. Thus, if the employee has earned $46 at piece rates for 46 hours of productive work and in addition has been compensated at 75 cents an hour for 4 hours of waiting time, his total compensation—$49—must be divided by his total hours of work—50—to arrive at his regular hourly rate of pay—98 cents. For the 10 hours of overtime the employee is entitled to additional compensation of $4.90 (10 hours x 49 cents). For the week's work he is thus entitled to a total of $53.90 (which is equivalent to 40 hours @ 98 cents plus 10 overtime hours @ $1.47).

In some cases an employee is hired on a piece-rate basis coupled with a minimum hourly guarantee. Where the total piece-rate earnings for the week fall short of the amount that would be earned for the total hours at the guaranteed rate, the employee is paid the difference. In such weeks the employee is in fact paid at an hourly rate and the minimum hourly guarantee which he was paid is his regular rate in that week. In the example just given, if the employee was guaranteed $1.10 an hour for productive working time, he would be paid $50.60 (46 x $1.10) for the 46 hours of productive work (instead of the $46 earned at piece rates). In a week in which no waiting time was involved, he would be owed an additional 55 cents (half time) for each of the 6 overtime hours worked, to bring his total compensation up to $53.90 (46 hours @ $1.10 plus 6 hours @ 55 cents or 40 hours @ $1.10 plus 6 hours @ $1.65). If he is paid at a different rate for waiting time, his regular rate is the weighted average of the two hourly rates.[15]

(3) *Day rates and job rates.* If the employee is paid a flat sum for a day's work or for doing a particular job, without regard to the number of hours worked in the day or at the job, and if he receives no other form of compensation for services, his regular rate is determined by totaling all the sums received at such day rates or job rates in the workweek and dividing by the total hours actually worked. He is then entitled to extra half-time pay at this rate for all hours worked in excess of 40 in the workweek.

(4) *Salaried employees; general.* If the employee is employed solely on a weekly salary basis, his regular hourly rate of pay, on which time and a half must be paid, is computed by dividing the salary by the number of hours which the salary is intended to compensate. If an employee is hired at a salary of $40 and if it is understood that this salary is compensation for the regular workweek of 35 hours, the employee's regular rate of pay is $40 divided by 35 hours, or $1.14 an hour, and when he works overtime he is entitled to receive $1.14 for each of the first 40 hours and $1.71 (one and one-half times $1.14) for each hour thereafter. If an employee is hired at a salary of $40 for a 40-hour week, his regular rate is $1 an hour. If his salary is $40 for a 44-hour week, his regular rate is 91¢ per hour. Where the salary covers a period longer than a workweek, such as a month, it must be reduced to its workweek equivalent. A monthly salary is subject to translation to its equivalent weekly wage by multiplying by 12 (the number of months) and dividing by 52 (the number of weeks). A semi-monthly salary is translated into its equivalent weekly wage by multiplying by 24 and dividing by 52. Once the weekly wage is arrived at, the regular hourly rate of pay will be calculated as indicated above.[16] Under regulations of the Administrator, pursuant to the authority given to him in section 7 (f) (3) of the act, the parties may provide that the regular rate shall be determined by dividing the monthly salary by the number of working days in the month and then by the number of hours of the normal or regular workday. Of course, the resultant rate in such a case must not be less than the statutory minimum of 75 cents per hour.

(5) *Salaried employees; irregular hours.* If an employee earns $46 per week with the understanding that the salary is to cover all hours worked and if his hours of work fluctuate from week to week, his regular rate of pay will vary from week to week and will be the average hourly rate each week. Suppose that during the course of four weeks the employee works 40, 46, 50, and 41 hours. His regular hourly rate of pay in each of these weeks is approximately $1.15, $1, 92 cents and $1.12, respectively. Since the employee has already received straight time compensation on a salary basis for all hours worked, only additional half-time is due. For the first week the employee is entitled to be paid $46; for the second week $49 ($46 plus 6 hours @ 50 cents) or (40 hours @ $1 plus 6 hours @ $1.50); for the third week $50.60 ($46 plus 10 hours @ 46 cents) or (40 hours @ 92 cents plus 10 hours @ $1.38); for the fourth week approximately $46.56 ($46 plus 1 hour @ 56 cents) or (40 hours @ $1.12 plus 1 hour @ $1.68).

(c) *Employees working at two rates.* Where an employee in a single workweek works at two or more different types of work for which different basic hourly rates (of not less than 75 cents) have been established, his regular rate for that week is the weighted average of such rates. That is, his total earnings (except statutory exclusions) from all such rates are divided by the total number of hours worked at all jobs.[17]

(d) *Payments other than cash.* Where payments are made to employees in the form of goods or facilities which are regarded as part of wages, the reasonable cost to the employer of such goods or of furnishing such facilities must be included in the regular rate.[18] Where, for example, an employer furnishes lodging to his employees in addition to cash wages, the reasonable cost of the lodging (per week) must be added to the cash wages before the regular rate is determined.

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[13] For a discussion of the exceptions to this rule under sections 7 (e) and 7 (f), see §§ 778.18, 778.19, and 778.20.

[14] For an alternative method of complying with the overtime requirements of the act as far as pieceworkers are concerned see § 778.19 (b).

[15] See § 778.3 (c).

[16] The regular rate of an employee who is paid a regular monthly salary of $130, or a regular semi-monthly salary of $65, is thus found to be 75¢ per hour. The Administrator has announced that, as an enforcement policy, he will consider that payment of such regular monthly or semi-monthly salary is in accordance with the minimum wage requirements of the act.

[17] For a discussion of the exceptions to this rule provided by section 7 (f) of the act see §§ 778.19 and 778.20.

[18] See §§ 777.7 and 777.12 (b) of this chapter for a discussion as to the inclusion of goods and facilities in wages and the method of determining reasonable cost.

WHAT PAYMENTS ARE EXCLUDED FROM THE "REGULAR RATE"

§ 778.4 *The statutory provisions.* Section 7 (d) provides as follows:

As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include:

(1) Sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency; [discussed in § 778.6 (e)]

(2) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment; [discussed in § 778.7]

(3) Sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Administrator set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Administrator) paid to performers, including announcers, on radio and television programs; [discussed in §§ 778.6 and 778.8]

(4) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar, benefits for employees; [discussed in § 778.6 (g)]

(5) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or forty in a workweek or in excess of the employee's normal working hours or regular working hours, as the case may be; [discussed in § 778.5 (a) and (b)]

(6) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days; or [discussed in § 778.5 (c) and (e)]

(7) Extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding forty hours), where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek. [Discussed in § 778.5 (a) and (e)]

Section 7 (g) provides as follows:

Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (d) shall be creditable toward overtime compensation payable pursuant to this section.

It is important to determine the scope of these exclusions, since all remuneration for employment paid to employees which does not fall within one of these seven exclusionary clauses must be added into the total compensation received by the employee before his regular hourly rate of pay is determined.

§ 778.5 *Extra compensation paid for overtime.*—(a) *General statement.* Certain premium payments made by employers for work in excess of or outside of specified daily or weekly standard work periods or on certain special days are regarded as overtime premiums. In such case, the extra compensation provided by the premium rates need not be included in the employee's regular rate of pay for the purpose of computing overtime compensation due under section 7 (a) of the Fair Labor Standards Act. Moreover, this extra compensation may be credited towards the overtime payments required by the act.

The three types of extra premium payments which may thus be treated as overtime premiums for purposes of the Fair Labor Standards Act, as amended are outlined in sections 7 (d) (5), (6) and (7) of the act as set forth in the preceding section. These are discussed in detail in the paragraphs following.

Section 7 (g) of the act specifically states that the extra compensation provided by these three types of payments may be credited toward overtime compensation due under section 7 for work in excess of 40 hours in a workweek. No other types of remuneration for employment may be so credited.

(b) *Premium pay for hours in excess of a daily or weekly standard.* Many employment contracts provide for the payment of overtime compensation for hours worked in excess of 8 per day or 40 per week. Under some contracts such overtime compensation is fixed at time and one-half the base rate; under others the overtime rate may be greater or less than time and one-half the base rate. If the payment of such contract overtime compensation is in fact contingent upon the employee's having worked 8 hours in a day or 40 hours in a week, the extra compensation is excluded from the regular rate and may be credited toward statutory overtime payments.[19]

Thus, if an employee is hired at the rate of $1 an hour and receives, as overtime compensation under his contract, of $1.40 per hour for each hour actually worked in excess of 8 per day, his employer may credit the total of the extra 40-cent payments thus made for daily overtime hours against the overtime compensation which is due under the statute for hours in excess of 40 in that workweek. If the same contract further provided for the payment of $1.75 for hours in excess of 12 per day, the extra 75-cent payments could likewise be credited toward overtime compensation due under the act. Similarly, where the employee's normal or regular daily or weekly working hours are greater or less than 8 hours and 40 hours respectively and his contract provides for the payment of premium rates for work in excess of such normal or regular hours of work for the day or week (such as 7 in a day or 35 in a week) the extra compensation provided by such premium rates, paid for excessive hours, is a true overtime premium to be excluded from the regular rate and it may be credited towards overtime compensation due under the act.[20]

Where payment at premium rates for hours worked in excess of a specified daily or weekly standard is made pursuant to the requirements of another applicable statute, the extra compensation provided by such premium rates will be regarded as a true overtime premium.

Extra premium compensation paid pursuant to contract or statute for work on the sixth or seventh day worked in the workweek is regarded in the same light as premiums paid for work in excess of 40 hours or the employee's normal or regular workweek.

(c) *Premium pay for work on Saturdays, Sundays, and other "special days".* Extra compensation provided by a premium rate of at least time and one-half which is paid for work on Saturdays, Sundays, holidays, or regular days of rest or on the sixth or seventh day of the workweek (hereinafter referred to as "special days") may be treated as an overtime premium for the purpose of the act. If the premium rate is less than time and one-half, the extra compensation provided by such rate must be included in determining the employee's regular rate of pay and cannot be credited toward statutory overtime due, unless it qualifies as an overtime premium under section 7 (d) (5).

The premium rate must be at least "one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days." Where an employee is hired on the basis of a salary for a fixed workweek or at a single hourly rate of pay, the rate paid for work on "special days" must be at least time and one-half his regular hourly rate in order to qualify under this section. If the employee is a pieceworker or if he works at more than

[19] In situations where it is the custom to pay employees for hours during which no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause, as these terms are explained in § 778.7, it is permissible (but not required) to count these hours as hours worked in determining whether overtime pay is due for hours in excess of 8 per day or 40 per week.

[20] To qualify as overtime premiums under section 7 (d) (5) the daily overtime premium payments must be made for hours in excess of 8 hours per day or the employee's normal or regular working hours. If the normal workday is artificially divided into a "straight time" period to which one rate is assigned, followed by a so-called "overtime" period for which a higher "rate" is specified, the arrangement will be regarded as a device to contravene the statutory purposes and the premiums will be considered part of the regular rate. For a fuller discussion on this problem, see § 778.22.

one job for which different hourly or piece rates have been established and these are bona fide rates applicable to the work when performed during non-overtime hours, the extra compensation provided by a premium rate of at least one and one-half times either (1) the bona fide rate applicable to the type of job the employee performs on the "special days," or (2) the average hourly earnings in the week in question, will qualify as an overtime premium under this subsection.[21]

The statute authorizes such premiums to be treated as overtime premiums only if they are actually based on "rates established in good faith." This phrase is used for the purpose of distinguishing the bona fide employment standards contemplated by section 7 (d) (6) from fictitious schemes and artificial or evasive devices.[22] Clearly, a rate which yields the employee less than time and one-half the minimum rate prescribed by the statute would not be a rate established in good faith.

To qualify as an overtime premium under this section, the extra compensation must be paid for work on the specified days. The term "holiday" is read in its ordinary usage to refer to those days customarily observed in the community in celebration of some historical or religious occasion. A day of rest arbitrarily granted to employees because of lack of work is not a "holiday" within the meaning of this section, nor is it a "regular day of rest." The term "regular day of rest" means a day on which the employee in accordance with his regular prearranged schedule is not expected to report for work. In some instances the "regular day of rest" occurs on the same day or days each week for a particular employee; in other cases, pursuant to a swing shift schedule, the scheduled day of rest rotates in a definite pattern, such as six days of work followed by two days of rest. In either case the extra compensation provided by a premium rate for work on such scheduled days of rest (if such rate is at least one and one-half times the bona fide rate established for like work during non-overtime hours on other days) may be treated as an overtime premium and thus need not be included in computing the employee's regular rate of pay and may be credited toward overtime payments due under the act.

The premium must, however, be paid because work is performed on the days specified and not for some other reason which would not qualify the premium as an overtime premium under section 7 (d) (5), (6) or (7).[23] Thus a premium rate paid an employee only when he receives less than 24 hours' notice that he is required to report for work on his regular day of rest is not a premium paid for work on one of the specified days; it is a premium imposed as a penalty upon the employer for failure to give adequate notice and to compensate the employee for the inconvenience of disarranging his private life. The extra compensation is not an overtime premium. It is part of his regular rate of pay.

(d) *"Clock pattern" premium pay.* Where a collective bargaining agreement or other applicable employment contract in good faith establishes certain hours of the day as the basic, normal or regular workday (not exceeding eight hours) or workweek (not exceeding 40 hours) and provides for the payment of a premium rate for work outside such hours, the extra compensation provided by such premium rate will be treated as an overtime premium if the premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during the basic, normal or regular workday or workweek.

To qualify as an overtime premium under this section the premium must be paid because the work was performed during hours "outside of the hours established * * * as the basic * * * workday or workweek" and not for some other reason. Thus, if the basic workday is established in good faith as the hours from 8 a. m. to 5 p. m. a premium of time and one-half paid for hours between 5 p. m. and 8 a. m. would qualify as an overtime premium. However, where the contract does not provide for the payment of a premium except for work between midnight and 6 a. m. the premium would not qualify under this section since it is not a premium paid for work outside the established workday but only for certain special hours outside the established workday, in most instances because they are undesirable hours. Similarly, where payment of premium rates for work are made after 5 p. m. only if the employee has not had a meal period or rest period they are not regarded as overtime premiums; they are premiums paid because of undesirable working conditions.

Premiums of the type which section 7 (d) (7) authorizes to be treated as overtime premiums, must be paid "in pursuance of an applicable employment contract or collective bargaining agreement," and the rates of pay and the daily and weekly work periods referred to must be established in good faith by such contract or agreement. Although as a general rule a collective bargaining agreement is a formal agreement which has been reduced to writing, an employment contract for purposes of section 7 (d) (7) may be either written or oral. Where there is a written employment contract and the practices of the parties differ from its provisions, it must be determined whether the practices of the parties have modified the contract. If the practices of the parties have modified the written provisions of the contract, the provisions of the contract as modified by the practices of the parties will be controlling in determining whether the requirements of section 7 (d) (7) are satisfied. The determination as to the existence of the requisite provisions in an applicable oral employment contract will necessarily be based on all the facts, including those showing the terms of the oral contract and the actual employment and pay practices thereunder.

(e) *Examples illustrating the application of section 7 (d) (6) and (7)—(1) Premiums for weekend and holiday work.* The application of section 7 (d) (6) may be illustrated by the following example. Suppose an agreement of employment calls for the payment of $1.50 an hour for all hours worked on a holiday or on Sunday in the operation of machines whose operators are paid a bona fide hourly rate of $1.00 for like work performed during nonovertime hours on other days. Suppose further that the workweek of such an employee begins at 12:01 a. m. Sunday, and in a particular week he works a schedule of 8 hours on Sunday and on each day from Monday through Saturday, making a total of 56 hours worked in the workweek.

Tuesday is a holiday. The payment of $64 to which the employee is entitled under the employment agreement will satisfy the requirements of the act since the employer may properly exclude from the regular rate the extra $4.00 paid for work on Sunday and the extra $4.00 paid for holiday work and credit himself with such amount against the statutory overtime premium required to be paid for the 16 hours worked over 40.

(2) *Premiums for work outside basic workday or workweek.* The effect of section 7 (d) (7) where "clock pattern" premiums are paid may be illustrated by reference to provisions typical of the applicable collective bargaining agreements traditionally in effect between employers and employees in the longshore and stevedoring industries. These agreements specify straight-time rates applicable during the hours established in good faith under the agreement as the basic, normal, or regular workday and workweek. Under one such agreement, for example, such workday and workweek are established as the first six hours of work, exclusive of mealtime, each day, Monday through Friday, between the hours of 8 a. m. and 5 p. m. Under another typical agreement, such workday and workweek are established as the hours between 8 a. m. and 12 noon and between 1 p. m. and 5 p. m., Monday through Friday. Work outside such workday and workweek is paid for at premium rates not less than one and one-half times the bona fide straight-time rates applicable to like work when performed during the basic, normal, or regular workday or workweek. The extra compensation provided by such premium rates will be excluded in computing the regular rate at which the employees so paid are employed and may be credited toward overtime compensation due under the Fair Labor Standards Act. For example, if an employee is paid $1.00 an hour under such an agreement for handling general cargo during the basic, normal, or regular workday and $1.50 per hour for like work outside of such workday, the extra 50 cents will be excluded from the regular rate and may be credited to overtime pay due under the act. Similarly, if the straight-time rate established in good faith by the contract

[21] For a fuller discussion of computation on the average rate, see § 778.3 (b) (2); on the rate applicable to the job, see § 778.19; on the "established" rate, see § 778.20.

[22] For further discussion of such devices, see § 778.21 and following.

[23] For examples distinguishing pay for work on a holiday from idle holiday pay, see § 778.7 (d) (2).

should be higher because of handling dangerous or obnoxious cargo, recognition of skill differentials, or similar reasons, so as to be $1.50 an hour during the hours established as the basic or normal or regular workday or workweek, and a premium rate of $2.25 an hour is paid for the same work performed during other hours of the day or week, the extra 75 cents may be excluded from the regular rate of pay and may be credited toward overtime pay due under the act. Similar principles are applicable where agreements following this general pattern exist in other industries.

(f) *Other types of contract premium pay distinguished.* The various types of contract premium rates which provide extra compensation qualifying as overtime premiums to be excluded from the regular rate (under section 7 (d) (5), (6), and (7)) and credited toward statutory overtime pay requirements (under section 7 (g)) have been described in paragraphs (a) through (e) of this section. The plain wording of the statute makes it clear that extra compensation provided by premium rates other than those described cannot be treated as overtime premiums. Wherever such other premiums are paid, they must be included in the employee's regular rate before statutory overtime compensation is computed; no part of such premiums may be credited toward statutory overtime pay.

Thus, the act requires the inclusion in the regular rate of such extra premiums as night shift differentials (whether they take the form of a percent of the base rate or an addition of so many cents per hour) and premiums paid for hazardous, arduous or dirty work. It also requires inclusion of any extra compensation which is paid as an incentive for the rapid performance of work, and since any extra compensation in order to qualify as an overtime premium must be provided by a premium rate per hour,[24] lump sum premiums which are paid without regard to the number of hours worked are not overtime premiums and must be included in the regular rate. For example, where an employer pays 8 hours' pay for a particular job whether it is performed in 8 hours or in less time, the extra premium of two hours' pay received by an employee who completes the job in six hours must be included in his regular rate. Similarly, where an employer pays for 8 hours at premium rates for a job performed during the overtime hours whether it is completed in 8 hours or less, no part of the premiums paid qualify as overtime premiums under section 7 (d) (5), (6), or (7).[25]

§ 778.6 *Bonuses* — (a) *Introduction.* Section 7 (d) of the act requires the inclusion in the regular rate of all remuneration for employment except seven specified types of payments. Among these are discretionary bonuses, gifts and payments in the nature of gifts on special occasions, contributions by the employer to certain welfare plans and payments made pursuant to certain profit-sharing, thrift and savings plans. These are discussed in paragraphs (d) through (g) of this section. Bonuses which do not qualify for exclusion from the regular rate as one of these types must be totaled in with other earnings to determine the regular rate on which overtime pay must be based.

(b) *Method of inclusion of bonus in regular rate.* Where a bonus payment is considered a part of the regular rate at which an employee is employed, it must be included in computing his regular hourly rate of pay and overtime compensation. No difficulty arises in computing overtime compensation if the bonus covers only one weekly pay period. The amount of the bonus is merely added to the other earnings of the employee (except statutory exclusions) and the total divided by total hours worked. Under many bonus plans, however, calculation of the bonus may necessarily be deferred over a period of time longer than a workweek. In such a case the employer may disregard the bonus in computing the regular hourly rate until such time as the amount of the bonus can be ascertained. Until that is done he may pay compensation for overtime at one and one-half times the regular rate paid the employee, exclusive of the bonus. When the amount can be ascertained, it must be apportioned back over the workweeks of the period during which it may be said to have been earned. The employee must then receive an additional amount of compensation for each week that he worked overtime during the period equal to one-half of the hourly rate of pay allocable to the bonus for that week multiplied by the number of overtime hours worked during the week. If it is impossible to allocate the bonus among the workweeks of the period in proportion to the amount of the bonus actually earned each week, some other reasonable and equitable method of allocation must be adopted. For example, it may be assumed that the employee earned an equal amount of bonus each hour of the pay period and the resultant hourly increase may be determined by dividing the total bonus by the number of hours worked by the employee during the period for which it is paid. The additional compensation due for overtime may then be computed by multiplying the total number of overtime hours worked during the period by one-half this hourly increase.

(c) *Percentage of total earnings as bonus.* In some instances the contract or plan for the payment of a bonus may also provide for the simultaneous payment of overtime compensation due on the bonus. For example, a contract made prior to the performance of services may provide for the payment of additional compensation in the way of a bonus at the rate of 10 percent of the employee's straight time earnings, and 10 percent of his overtime earnings.[26] In such instances, of course, payments according to the contract will satisfy in full the overtime provisions of the act and no recomputation will be required.

(d) *Discretionary bonuses.* Section 7 (d) (3) (a) provides that the regular rate shall not be deemed to include "Sums paid in recognition of services performed during a given period if * * * (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly * * *."

Such sums may not, however, be credited toward overtime compensation due under the act.[27]

In order for a bonus to qualify for exclusion under this subsection the employer must retain discretion both as to the fact of payment and as to the amount until a time quite close to the end of the period for which the bonus is paid. The sum, if any, to be paid as a bonus is determined by the employer without prior promise or agreement. The employee has no contract right, express or implied, to any amount. If the employer promises in advance to pay a bonus, he has abandoned his discretion with regard to it. Thus, if an employer announces to his employees in January that he intends to pay them a bonus in June, he has thereby abandoned his discretion regarding the fact of payment by promising a bonus to his employees. Such a bonus would not be excluded from the regular rate under this subsection. Similarly, an employer who promises to sales employees that they will receive a monthly bonus computed on the basis of allocating 1 cent for each item sold whenever, in his discretion, the financial condition of the firm warrants such payment, has abandoned discretion with regard to the amount of the bonus though not with regard to the fact of payment. Such a bonus would not be excluded from the regular rate. On the other hand, if a bonus such as the one just described were paid without prior contract, promise or announcement and the decision as to the fact and amount of payment lay in the employer's sole discretion, the bonus would be properly excluded from the regular rate.

The bonus, to be excluded, must not be paid "pursuant to any prior contract, agreement, or promise." For example, any bonus which is promised to employees upon hiring or which is the result of collective bargaining would not be excluded from the regular under this subsection. Bonuses which are announced to employees to induce them to work more steadily or more rapidly or more efficiently or to remain with the firm are regarded as part of the regular rate of pay. Attendance bonuses, individual or group production bonuses, bonuses for quality and accuracy of work, bonuses contingent upon the employee's continuing in employment until the time the payment is to be made and

[24] Except in the special case of pieceworkers as discussed in § 778.19.

[25] For a further discussion of this and related problems see §§ 778.14 and 778.15.

[26] But compare the use of this form of payment as a device to evade the overtime requirements of the act, as described in § 778.23.

[27] Bonus payments are payments made in addition to the regular earnings of an employee For a discussion of the bonus form as an evasive bookkeeping device, see § 778.23.

the like are in this category. They must be included in the regular rate of pay.

(e) *Gifts, Christmas and special occasion bonuses.* Section 7 (d) (1) provides that the term "regular rate" shall not be deemed to include:

> Sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency * * *.

Such sums may not, however, be credited toward overtime compensation due under the act.

To qualify for exclusion under this section the bonus must be actually a gift or in the nature of a gift. If it is measured by hours worked, production or efficiency, the payment is geared to wages and hours during the bonus period and is no longer to be considered as in the nature of a gift. If the payment is so substantial that it can be assumed that employees consider it a part of the wages for which they work, the bonus cannot be considered to be in the nature of a gift. Obviously, if the bonus is paid pursuant to contract (so that the employee has a legal right to the payment and could bring suit to enforce it), it is not in the nature of a gift.

If the bonus paid at Christmas or on other special occasion is a gift or in the nature of a gift, it will be excluded from the regular rate under this subsection even though it is paid with regularity so that the employees are led to expect it and even though the amounts paid to different employees or groups of employees vary with the amount of the salary or regular hourly rate of such employees or according to their length of service with the firm so long as the amounts are not measured by or directly dependent upon hours worked, production or efficiency. A Christmas bonus paid (not pursuant to contract) in the amount of two weeks' salary to all employees and an equal additional amount for each 5 years of service with the firm, for example, would be excluded from the regular rate under this category.

(f) *Profit-sharing, thrift and savings plans.* Section 7 (d) (3) (b) provides that the term "regular rate" shall not be deemed to include:

> Sums paid in recognition of services performed during a given period if * * * the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Administrator set forth in appropriate regulations * * *.

Such sums may not, however, be credited toward overtime compensation due under the act. The Administrator has issued regulations under this section which are published in the FEDERAL REGISTER as Part 549. Payments made pursuant to plans which meet the requirements of the regulations in this part will be properly excluded from the regular rate.

(g) *Welfare plans.* Section 7 (d) (4) provides that the term "regular rate" shall not be deemed to include:

> Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees * * *.

Such sums may not, however, be credited toward overtime compensation due under the act.

In order for an employer's contribution to qualify for exclusion from the regular rate under this section the following conditions must be met:

(1) There must be a formal plan or system set up by the employer. This may be either a company-financed plan or an employer-employee contributory plan.

(2) The primary purpose of the plan must be that of providing systematically for the payment of definitely determinable benefits to employees on account of death, disability or retirement or to provide medical care, hospitalization benefits, and the like. (This type of plan will be referred to as a welfare plan.)

(3) The employer's contributions must be paid irrevocably to a third party according to a trust or other funded arrangement (such as an insurance plan). The trust or fund must be set up in such a way that in no event will the employer be able to recapture any of the contributions paid in nor in any way divert the funds to his own use. Where the payments are made to a single trustee, the trustee must be an individual other than the employer or an officer, affiliate or representative of the employer. If the payments are made to a group of trustees, the majority must not be officers, affiliates, or representatives of the employer.

(4) No employee has the right to assign his benefits under the plan nor the option to receive any part of the employer's contributions in cash instead of the benefits under the plan. *Provided, however,* That if a plan otherwise qualifies as a bona fide welfare plan under this subsection, it will still be regarded as a bona fide plan even though it provides, as an incidental part thereof, for the payment to an employee in cash of all or a part of the amount standing to his credit at the time of the severance of the employment relation due to causes other than retirement, disability or death, and even though, upon proper termination of the plan, the amounts standing to the credit of participating employees are distributed to them at the time of termination.

The Administrator's position on the question of when an employer's contributions to a welfare plan may be excluded from the regular rate under this subsection is similar to that of the Bureau of Internal Revenue in determining what constitutes "wages" for social security tax purposes. If the payments in question are excluded from the category of wages under section 1426 (a) (2) of the Federal Insurance Contributions Act and section 1607 (b) (2) of the Federal Unemployment Tax Act, they would not be regarded by the Administrator as part of the regular rate of pay under section 7 (d) of the Fair Labor Standards Act, as amended.

It should be emphasized that it is the employer's contribution to the fund or trust that is excluded from or included in the regular rate according to whether or not the plan meets the foregoing requirements. If the plan does not qualify as a bona fide welfare plan under section 7 (d) (4), the contribution is treated the same as any bonus payment which is part of the regular rate of pay, and at the time the contribution is made the amount thereof must be apportioned back over the workweeks of the period during which it may be said to have accrued. Overtime compensation based upon the resultant increases in hourly rate is due for each overtime hour worked during any workweek of the period. The subsequent distribution of accrued funds to an employee on account of severance of employment (or for any other reason) would not result in any increase in his regular rate in the week in which the distribution is made.

§ 778.7 *Payments not for hours worked*—(a) *The statutory provision.* Section 7 (d) (2) provides that the term "regular rate" shall not be deemed to include:

> payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment * * *.

However, since such payments are not compensation for work, no part of such payments can be credited toward overtime compensation due under the act.

(b) *Reimbursement for expenses.* Where an employee incurs expenses on his employer's behalf or where he is required to expend sums solely by reason of action taken for the convenience of his employer, reimbursement for such expenses is not included in the employee's regular rate (if the amount of the reimbursement reasonably approximates the expenses incurred). Such payment is not compensation for services rendered.

Payment by way of reimbursement for the following types of expenses will not be regarded as part of the employee's regular rate:

(1) The actual amount expended by an employee in purchasing supplies, tools, materials, or equipment on behalf of his employer.

(2) The actual or reasonably approximate amount expended by an employee in purchasing, laundering, or repairing uniforms or special clothing which his employer requires him to wear.

(3) The actual or reasonably approximate amount expended by an employee, who is travelling "over the road" on his employer's business, for transportation (whether by private car or common carrier) and living expenses away from home; other travel expenses, such as taxicab fares, incurred while travelling on the employer's business.

(4) "Supper money"—a reasonable amount given to an employee, who ordinarily works the day shift and can ordinarily return home for supper, to cover the cost of supper when he is

requested by his employer to continue work during the evening hours.

(5) The actual or reasonably approximate amount expended by an employee as temporary excess home-to-work travel expenses incurred (i) because the employer has moved the plant to another town before the employee has had an opportunity to find living quarters at the new location or (ii) because the employee, on a particular occasion, is required to report for work at a place other than his regular workplace.

The foregoing list is intended to be illustrative rather than exhaustive.

It should be noted that only the actual or reasonably approximate amount of the expense is excluded from the regular rate. If the amount paid as "reimbursement" is disproportionately large, the excess amount will be included in the regular rate.

The expenses for which reimbursement is made must, in order to merit exclusion from the regular rate under this section, be expenses incurred by the employee on the employer's behalf or for his benefit or convenience. If the employer reimburses the employee for expenses normally incurred by the employee for his own benefit, he is, of course, increasing the employee's regular rate thereby. An employee normally incurs expenses in traveling to and from work, buying lunch, paying rent, and the like. If the employer reimburses him for these normal everyday expenses, the payment is not excluded from the regular rate as "reimbursement for expenses." Whether the employer "reimburses" the employee for such expenses or furnishes the facilities (such as free lunches or free housing), the amount paid to the employee (or the reasonable cost to the employer where facilities are furnished) enters into the regular rate of pay.[28]

(c) *Pay for certain idle hours.* Payments which are made for occasional periods when the employee is not at work due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause, where the payments are in amounts approximately equivalent to the employee's normal earnings for a similar period of time, are not made as compensation for his hours of employment. Therefore, such payments are excluded from the regular rate of pay and, for the same reason, no part of such payments may be credited toward overtime compensation due under the act.

This section deals with the type of absences which are infrequent or sporadic or unpredictable. It has no relation to regular "absences" such as lunch periods nor to regularly scheduled days of rest. Sundays may not be workdays in a particular plant, but this does not make them either "holidays" or "vacations," or days on which the employee is absent because of the failure of the employer to provide sufficient work. The term holiday is read in its ordinary usage to refer to those days customarily observed in the community in celebration of some historical or religious occasion; it does not refer to days of rest given to employees in lieu of or as an addition to compensation for working on other days.

The term "failure of the employer to provide sufficient work" is intended to refer to occasional, sporadically recurring situations where the employee would normally be working but for such a factor as machinery breakdown, failure of expected supplies to arrive, weather conditions affecting the ability of the employee to perform the work and similarly unpredictable obstacles beyond the control of the employer. The term does not include reduction in work schedule,[29] ordinary temporary lay-off situations or any type of routine, recurrent absence of the employee.

The term "other similar cause" refers to payments made for periods of absence due to factors like holidays, vacations, sickness and failure of the employer to provide work. Examples of "similar causes" are absences due to jury service, reporting to a draft board, attending a funeral of a family member, inability to reach the workplace because of weather conditions. Only absences of a non-routine character which are infrequent or sporadic or unpredictable are included in the "other similar cause" category.

(d) *Pay for foregoing holidays and vacations.* As stated in paragraph (c) of this section, certain payments made to an employee for periods during which he performs no work because of a holiday or vacation are not required to be included in the regular rate because they are not regarded as compensation for working. Suppose an employee who is entitled to such a paid idle holiday or paid vacation foregoes his holiday or vacation and performs work for the employer on the holiday or during the vacation period. If, under the terms of his employment he is entitled to a certain sum as holiday or vacation pay, whether he works or not, and receives pay at his customary rate (or higher) in addition for each hour that he works on the holiday or vacation day, the certain sum allocable to holiday or vacation pay is still to be excluded from the regular rate. It is still not regarded as compensation for hours of work if he is otherwise compensated at his customary rate (or at a higher rate) for his work on such days. Since it is not compensation for work it may not be credited toward overtime compensation due under the act. Two examples may serve to illustrate this principle:

(1) An employee whose rate of pay is $1 an hour and who usually works a 6-day 48-hour week is entitled, under his employment contract, to a week's paid vacation in the amount of his usual straight-time earnings—$48. He foregoes his vacation and works 50 hours in the week in question. He is owed $50 as his total straight-time earnings for the week, and $48 in addition as his vacation pay. Under the statute he is owed an additional $5 as overtime premium (additional half-time) for the 10 hours in excess of 40. His rate of $1 per hour has not been increased by virtue of the payment of $48 vacation pay, but no part of the $48 may be offset against the statutory overtime compensation which is due. (Nothing in this example is intended to imply that the employee has a statutory right to $48 or any other sum as vacation pay.[30] This is a matter of private contract between the parties who may agree that vacation pay will be measured by straight-time earnings for any agreed number of hours or days, or by total normal or expected take-home pay for the period or that no vacation pay at all will be paid. The example merely illustrates the proper method of computing overtime for an employee whose employment contract provides $48 vacation pay.)

(2) An employee, who is entitled, under his employment contract, to 8 hours' pay at his rate of $1 an hour for the Christmas holiday, foregoes his holiday and works 9 hours on that day. During the entire week he works a total of 50 hours. He is paid, under his contract, $50 as straight-time compensation for 50 hours plus $8 as idle holiday pay. He is owed, under the statute, an additional $5 as overtime premium (additional half-time) for the 10 hours in excess of 40. His rate of $1 per hour has not been increased by virtue of the holiday pay but no part of the $8 holiday pay may be credited toward statutory overtime compensation due.

The latter example should be distinguished from a situation in which an employee is entitled to idle holiday pay only when he is actually idle on the holiday, and who, if he foregoes his holiday also, under his contract, foregoes his idle holiday pay. The typical situation is one in which an employee is entitled, by contract to 8 hours' pay at his rate of $1 an hour for certain named holidays when no work is performed. If, however, he is required to work on such days, he does not receive his idle holiday pay. Instead he receives a premium rate of $1.50 (time and one-half) for each hour worked on the holiday. If he worked 9 hours on the holiday and a total of 50 hours for the week, he would be owed, under his contract, $13.50 (9×$1.50) for the holiday work and $41 for the other 41 hours worked in the week, a total of $54.50. Under the statute (which does not require premium pay for a holiday) he is owed $55 for a workweek of 50 hours at a rate of $1 an hour. Since the holiday premium qualifies as an overtime premium under section 7 (d) (6) [31] the employer may credit it toward statutory overtime compensation due and need pay the employee only the additional sum of 50 cents to meet the statutory requirements.

If all other conditions remained the same but the contract called for the payment of $2 (double time) for each hour worked on the holiday, the employee would receive, under his contract, $18 (9×$2.00) for the holiday work in addition to $41 for the other 41 hours worked, a total of $59. Since this holiday premium is an overtime premium under section 7 (d) (6), the employer may credit

[28] See also § 778.3 (d) and the footnote thereto.

[29] See § 778.9 for discussion of reduction in work schedule.

[30] On the requirements of the act, see Part 777 as to minimum wage; § 778.2 (b) of this chapter as to overtime pay.

[31] See § 778.5 (c) of this bulletin.

it toward statutory overtime compensation due. Since the total paid exceeds the statutory requirements, no additional compensation is due under the act. In distinguishing this situation from that in example (2) above, it should be noted that the contract provisions in the two situations are different and result in the payment of different amounts. In example (2) the employee received a total of $17 attributable to the holiday (8 hours' idle holiday pay at $1 an hour and $9 pay for 9 hours' work on the holiday). In the situation discussed in this paragraph the employee received $18 pay for the holiday—double time for 9 hours of work. Thus, clearly, all of the pay in this situation is paid for and directly related to the number of hours worked on the holiday.

(e) *"Show-up" and "call-back" pay.* Under some employment agreements, an employee may be paid a minimum of a specified number of hours' pay at the applicable straight-time or overtime rate on infrequent and sporadic occasions when, after reporting to work at his scheduled starting time on a regular workday or on another day on which he has been scheduled to work, he is not provided with the expected amount of work. The amounts that may be paid under such an agreement over and above what the employee would receive if paid at his customary rate only for the number of hours worked are paid to compensate the employee for the time wasted by him in reporting for work and to prevent undue loss of pay resulting from the employer's failure to provide expected work during regular hours. One of the primary purposes of such an arrangement is to discourage employers from calling their men in to work for only a fraction of a day when they might get full-time work elsewhere. Pay arrangements of this kind are commonly referred to as "show-up" or "reporting" pay. Under the principles and subject to the conditions set forth in §§ 778.3 to 778.5, that portion of such payment which represents compensation at the applicable rates for the straight-time or overtime hours actually worked, if any, during such period may be credited as straight-time or overtime compensation, as the case may be, in computing overtime compensation due under the act. The amount by which the specified number of hours' pay exceeds such compensation for the hours actually worked is considered as a payment that is not made for hours worked. As such, it may be excluded from the computation of the employee's regular rate and cannot be credited toward statutory overtime compensation due him.

To illustrate, assume that an employee whose workweek begins on Monday and who is paid $1 an hour reports for work on Monday according to schedule and is sent home after being given only 2 hours of work. He then works 8 hours each day on Tuesday through Saturday, inclusive, making a total of 42 hours for the week. The employment agreement covering the employees in the plant, who normally work 8 hours a day, Monday through Friday, provides that an employee reporting for scheduled work on any day will receive a minimum of 4 hours' work or pay. The employee thus receives not only the $2 earned in the 2 hours of work on Monday but an extra 2 hours' "show-up" pay, or $2 by reason of this agreement. However, since this $2 in "show-up" pay is not regarded as compensation for hours worked, the employee's regular rate remains $1 and the overtime requirements of the act are satisfied if he receives, in addition to the $42 straight-time pay for 42 hours and the $2 "show-up" payment, the sum of $1 as extra compensation for the 2 hours of overtime work on Saturday.

In the interest of simplicity and uniformity, these principles will be applied also with respect to typical minimum "call-back" or "call-out" payments made pursuant to employment agreements. Typically, such minimum payments consist of a specified number of hours' pay at the applicable straight-time or overtime rates which an employee receives on infrequent and sporadic occasions when, after his scheduled hours of work have ended and without prearrangement, he responds to a call from his employer to perform extra work.

The application of these principles to "call-back" payments may be illustrated as follows: An employment agreement provides a minimum 3 hours' pay at time and one-half for any employee called back to work outside his scheduled hours. The employees covered by the agreement normally work 8 hours each day, Monday through Friday, inclusive, in a workweek beginning on Monday, and are paid overtime compensation at time and one-half for all hours worked in excess of 8 in any day or 40 in any workweek. Assume that an employee covered by this agreement and paid at the rate of $1 an hour works 1 hour overtime or a total of 9 hours on Monday, and works 8 hours each on Tuesday through Friday, inclusive. After he has gone home on Friday evening he is called back to perform an emergency job. His hours worked on the call total 2 hours and he receives 3 hours' pay at time and one-half, or $4.50, under the "call-back" provision, in addition to $40 for working his regular schedule and $1.50 for the overtime worked on Monday evening.

In computing overtime compensation due this employee under the act, the 43 actual hours (not 44) are counted as working time during the week. In addition to $43 pay at the $1 rate for all these hours, he has received under the agreement a premium of 50 cents for the one overtime hour on Monday and of $1 for the 2 hours of overtime work on the call, plus an extra sum of $1.50 paid by reason of the provision for minimum "call-back" pay. For purposes of the act, the extra premiums paid for actual hours of overtime work on Monday and on the Friday call (a total of $1.50) may be excluded as true overtime premiums in computing his regular rate for the week and may be credited toward overtime compensation due under the act, but the extra $1.50 received under the "call-back" provision is not regarded as paid for hours worked; therefore, it may be excluded from the regular rate, but it cannot be credited toward overtime compensation due under the act. The regular rate of the employee, therefore, remains $1.00, and he has received an overtime premium of 50 cents an hour for 3 overtime hours of work. This satisfies the requirements of section 7 of the act. The same would be true, of course, if, in the foregoing example, the employee was called back outside his scheduled hours for the 2-hour emergency job on another night of the week or on Saturday or Sunday, instead of on Friday night.

(f) *Pay for non-productive hours distinguished.* Under the Fair Labor Standards Act an employee must be compensated for all hours worked. As a general rule the term "hours worked" will include (1) all time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (2) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances, in such activities as waiting for work, remaining "on call", traveling on the employer's business or to and from workplaces, and in meal periods and rest periods are regarded as working time and some are not.[32] To the extent that these hours are regarded as working time, payment made as compensation for these hours obviously cannot be characterized as "payments not for hours worked." Such compensation is treated in the same manner as compensation for any other working time and is, of course, included in the regular rate of pay. Where payment is ostensibly made as compensation for such of these hours as are not regarded as working time under the Fair Labor Standards Act, the payment is nevertheless included in the regular rate of pay unless it qualifies for exclusion from the regular rate under section 7 (d) (2) as one of a type of "payments made for occasional periods when no work is performed due to * * * failure of the employer to provide sufficient work, or other similar cause" as discussed in § 778.7 (c). For example, an employment contract may provide that employees who are assigned to take calls for specific periods will receive a payment of $2 for each 8-hour period during which they are "on call" in addition to pay at their regular (or overtime) rate for hours actually spent in making calls. If the employees who are thus on call are not confined to their homes or to any particular place, but may come and go as they please, provided that they leave a telephone number at which they may be reached, the hours spent "on call" are

[32] See Part 785 of this chapter which will replace Interpretative Bulletin No. 13 as a statement of the principles for determining hours worked under the Fair Labor Standards Act, as amended. For a discussion of travel time in particular and preliminary and postliminary activities in general as working time see Part 790 of this chapter.

not considered as hours worked. The payment received by such employees for such "on call" time is, therefore, not allocable to any specific hours of work, although it is clearly paid as compensation for performing a duty involved in the employee's job. The payment must therefore be included in the employee's regular rate in the same manner as any payment for services, such as an attendance bonus, which is not related to any specific hours of work.

(g) *"Other similar payments"; general.* The preceding paragraphs of this section have enumerated and discussed the basic types of payments which are excluded from the regular rate under section 7 (d) (2) because they are not made as compensation for hours of work. Since a variety of miscellaneous payments are paid by an employer to an employee under peculiar circumstances, it was not considered feasible to attempt to list them. It is clear that the clause was not intended to permit the exclusion from the regular rate of payments such as bonuses or the furnishing of facilities like board and lodging which, though not directly attributable to any particular hours of work are, nevertheless, clearly understood to be compensation for services.

A few examples may serve to illustrate the type of payments intended to be excluded as "other similar payments":

Sums paid to an employee for the rental of his truck or car.

Loans or advances made by the employer to the employee.

The cost to the employer of conveniences furnished to the employee such as parking space, restrooms, lockers, on-the-job medical care and recreational facilities.

§ 778.8 *Talent fees in the radio and television industry.* Section 7 (d) (3) provides for the exclusion from the regular rate of "talent fees (as such talent fees are defined and delimited by regulations of the Administrator) paid to performers, including announcers, on radio and television programs." Regulations defining "talent fees" have been issued and published in the FEDERAL REGISTER as Part 550 of this chapter. Payments which accord with this definition are excluded from the regular rate.

SPECIAL PROBLEMS

§ 778.9 *Reduction in workweek schedule with no change in pay*—(a) *General statement.* Since the regular rate of pay is the average hourly rate at which an employee is actually employed, and since this rate is determined by dividing his total remuneration for employment (except statutory exclusions) for a given workweek by the total hours worked in that workweek for which such remuneration was paid, it necessarily follows that if the schedule of hours is reduced while the pay remains the same, the regular rate has been increased.

(b) *Effect on salary for fixed workweek.* If an employee was hired at a salary of $40 for a fixed workweek of 40 hours, his regular rate at the time of hiring was $1 per hour. If his workweek is later reduced to a fixed workweek of 35 hours while his salary remains the same, it is the fact that it now takes him only 35 hours to earn $40, so that he earns his salary at the average rate of $1.14 per hour. His regular rate thus becomes $1.14 per hour; it is no longer $1 an hour. Overtime pay is due under the Act only for hours worked in excess of 40, not 35, but if the understanding of the parties is that the salary of $40 now covers 35 hours of work and no more, the employee would be owed $1.14 per hour under his employment contract for each hour worked between 35 and 40. He would be owed time and one-half of $1.14 ($1.71) per hour, under the statute, for each hour worked in excess of 40 in the workweek. In weeks in which no overtime is worked only the provisions of section 6 of the act, requiring the payment of not less than 75 cents per hour, apply, so that the employee's right to receive $1.14 per hour is enforceable only under his contract. However, in overtime weeks the Administrator has the duty to insure the payment of time and one-half the employee's regular rate of pay for hours in excess of 40 and overtime cannot be said to have been paid until all straight time compensation due the employee under the statute or his employment contract has been paid. Thus if the employee works 41 hours in a particular week, he is owed his salary for 35 hours—$40, 5 hours' pay at $1.14 per hour for the 5 hours between 35 and 40—$5.70, and one hour's pay at $1.71 for the one hour in excess of 40—$1.71, or a total of $47.41 for the week.

(c) *Effect if salary is for variable workweek.* The discussion in the prior paragraph sets forth one result of reducing the workweek from 40 to 35 hours. It is not either the necessary result or the only possible result. As in all cases of employees hired on a salary basis, the regular rate depends in part on the agreement of the parties as to what the salary is intended to compensate. In reducing the workweek to 35 hours the parties may agree to change the basis of the employment arrangement by providing that the salary which formerly covered a fixed workweek of 40 hours now covers a variable workweek up to 40 hours. If this is the new agreement, the employee receives $40 for workweeks of varying lengths, such as 35, 36, 38, 40 hours. His rate thus varies from week to week, but in weeks of 40 hours or over, it is $1 per hour (since the agreement of the parties is that the salary covers up to 40 hours and no more) and his overtime rate, for hours in excess of 40, thus remains $1.50 per hour. Such a salary arrangement presumably contemplates that the salary will be paid in full for any workweek of 40 hours or less. The employee would thus be entitled to his full salary if he worked only 25 or 30 hours. No deductions for hours not worked in short workweeks would be made.[23]

(d) *Effect on hourly rate employees.* A similar situation is presented where employees have been hired at an hourly rate of pay and have customarily worked a fixed workweek. If the workweek is reduced from 40 to 35 hours without reduction in total pay, the average hourly rate is thereby increased as in paragraph (b) of this section. If the reduction in work schedule is accompanied by a new agreement altering the mode of compensation from an hourly rate basis to a fixed salary for a variable workweek up to 40 hours, the results described in paragraph (c) of this section follow.

(e) *Effect on salary covering more than 40 hours' pay.* The same reasoning applies to a salary covering straight time pay for a longer workweek. If an employee was hired at a fixed salary of $55 for 55 hours of work, he was entitled to statutory overtime for the 15 hours in excess of 40 at the rate of 50 cents per hour (half time) in addition to his salary. If the workweek is later reduced to 50 hours, with the understanding between the parties that the salary covers all hours up to 55, his regular rate in any week of 55 hours or less is determined by dividing the salary by the number of hours worked to earn it in that particular week, and additional half time, at that rate, is due for each hour in excess of 40. In weeks of 55 hours or more, his regular rate is $1 per hour. If the understanding of the parties is that the salary now covers a fixed workweek of 50 hours, his regular rate is $1.10 per hour in all weeks. This assumes that when an employee works less than 50 hours in a particular week, deductions are made at the rate of $1.10 per hour for the hours not worked.

The reasoning does not, of course, apply to a situation in which the former earnings at both straight time and overtime are paid to the employee for the reduced workweek. Suppose an employee was hired at an hourly rate of $1 an hour and regularly worked 50 hours, earning $55 as his total straight time and overtime compensation, and the parties now agree to reduce the workweek to 46 hours without any reduction in take-home pay. The parties in such a situation may agree to an increase in the hourly rate from $1 per hour to $1.12½ so that for a workweek of 46 hours (the reduced schedule) the employee's straight time and overtime earnings will be $55. The parties cannot, however, agree that the employee is to receive exactly $55 as total compensation (including overtime pay) for a workweek varying, for example, up to 50 hours, unless he does so pursuant to contracts specifically permitted in section 7 (e) of the act, as discussed in § 778.18. An employer cannot otherwise discharge his statutory obligation to pay overtime compensation to an employee who does not work the same fixed hours each week by paying a fixed amount purporting to cover both straight time and overtime compensation for an "agreed" number of hours. To permit such a practice without proper statutory safeguards would result in sanctioning the circumvention of the provisions of the act which require that an employee who works more than 40 hours in any workweek be compensated, in accordance with express congressional intent, at time and one-half his regular rate of pay for the burden of working long hours. In arrangements of this type, no additional financial pressure would fall upon the employer and no additional compen-

[23] For a discussion of the effect of deductions on the regular rate see § 778.12.

sation would be due to the employee under such a plan until the workweek exceeded 50 hours.

(f) *Temporary or sporadic reduction in schedule.* The problem of reduction in the workweek is somewhat different where a temporary reduction is involved. Reductions for the period of a dead or slow season follow the rules announced above. However, reduction on a more temporary or sporadic basis presents a different problem. It is obvious that as a matter of simple arithmetic an employer might adopt a series of different rates for the same work, varying inversely with the number of overtime hours worked in such a way that the employee would earn no more than his straight time rate no matter how many hours he worked. If he set the rate at $1 per hour for all workweeks in which the employee worked 40 hours or less, 98½ cents per hour for workweeks of 41 hours, 95 cents for workweeks of 42 hours, 91 cents for workweeks of 50 hours and so on, the employee would always receive (for straight time and overtime at these "rates") precisely $1 an hour and no more regardless of the number of overtime hours worked. This is an obvious bookkeeping device designed to avoid the payment of overtime compensation and is not in accord with the law. The regular rate of pay of this employee for overtime purposes is, obviously, the rate he earns in the normal non-overtime week—in this case, $1 per hour.

The situation is different in degree but not in principle where employees who have been hired at a bona fide 80-cent rate usually working 50 hours and taking home $44 as total straight time and overtime for the week are, during occasional weeks, cut back to 42 hours. If the employer raises their rate to $1 for such weeks so that their total compensation is $43 for a 42-hour week the question may properly be asked, when they return to the 50-hour week, the 80-cent rate and the gross pay of $44, whether the 80-cent rate is really their regular rate. Are they putting in 8 additional hours of work for that extra dollar or is their "regular" rate really now $1 an hour since this is what they earn in the short workweek? It seems clear that where different rates are paid from week to week for the same work and where the difference is justified by no factor other than the number of hours worked by the individual employee—the longer he works the lower the rate—the device is evasive and the rate actually paid in the shorter or non-overtime week is his regular rate for overtime purposes in all weeks.

(g) *Plan for gradual permanent reduction in schedule.* In some cases, pursuant to a definite plan for the permanent reduction of the normal scheduled workweek from say, 48 hours to 40 hours, an agreement is entered into with a view to lessening the shock caused by the expected reduction in take-home wages. The agreement may provide for a rising scale of rates as the workweek is gradually reduced. The varying rates established by such agreement will be recognized as bona fide in the weeks in which they are respectively operative provided that (1) the plan is bona fide and there is no effort made to evade the overtime requirements of the act; (2) there is a clear downward trend in the duration of the workweek throughout the period of the plan even though fluctuations from week to week may not be constantly downward; and (3) the various rates are operative for substantial periods under the plan and do not vary from week to week in accordance with the number of hours which any particular employee or group happens to work.

(h) *Alternating workweeks of different fixed lengths.* In some cases an employee is hired on a salary basis with the understanding that his weekly salary is intended to cover the fixed schedule of hours (and no more) and that this fixed schedule provides for alternating workweeks of different fixed lengths. For example, many offices operate with half staff on Saturdays and, in consequence, employees are hired at a fixed salary covering a fixed working schedule of 7 hours a day Monday through Friday and 5 hours on alternate Saturdays. The parties agree that extra compensation is to be paid for all hours worked in excess of the schedule in either week, at the base rate for hours between 35 and 40 in the short week and at time and one-half such rate for hours in excess of 40 in all weeks. Such an arrangement results in the employee's working at two different rates of pay—one thirty-fifth of the salary in short workweeks and one-fortieth of the salary in the longer weeks. If the provisions of such a contract are followed, if the non-overtime hours are compensated in full at the applicable regular rate in each week and overtime compensation is properly computed for hours in excess of 40 at time and one-half the rate applicable in the particular workweek, the overtime requirements of the Fair Labor Standards Act will be met. While this situation bears some resemblance to the one discussed in paragraph (f) of this section there is this significant difference: the arrangement is permanent, the length of the respective workweeks and the rates for such weeks are fixed on a permanent-schedule basis far in advance and are therefore not subject to the control of the employer and do not vary with the fluctuations in business. In an arrangement of this kind, if the employer required the employee to work on Saturday in a week in which he was scheduled for work only on the Monday through Friday schedule, he would be paid at his regular rate for all the Saturday hours in addition to his salary.

§ 778.10 *Change in the beginning of the workweek.* As stated in § 778.2 (c), the beginning of the workweek may be changed for an employee or for a group of employees if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act. A change in the workweek necessarily results in a situation in which one or more hours or days fall in both the "old" workweek as previously constituted and the "new" workweek. Thus, if the workweek in the plant commenced at 7 a. m. on Monday and it is now proposed to begin the workweek at 7 a. m. on Sunday, the hours worked from 7 a. m. Sunday to 7 a. m. Monday will constitute both the last hours of the old workweek and the first hours of the newly established workweek.

If the hours which fall within both workweeks are hours in which the employee does no work, his statutory compensation for each workweek is, of course, determinable in precisely the same manner as it would be if no overlap existed. If, on the other hand, some of the employee's working time falls within hours which are included in both workweeks, the Wage and Hour Division, as an enforcement policy, will assume that the overtime requirements of section 7 of the act have been satisfied if computation is made as follows:

(1) Assume first that the overlapping hours are to be counted as hours worked only in the "old" workweek and not in the new; compute straight time and overtime compensation due for each of the two workweeks on this basis and total the two sums.

(2) Assume now that the overlapping hours are to be counted as hours worked only in the new workweek and not in the old, and complete the total computation accordingly.

(3) Compare the two totals and pay the higher.

Suppose that, in the example given, the employee worked 5 hours on Sunday, March 12, 1950. His workweek commenced at 7 a. m. on Monday, March 6th and he worked 40 hours March 6th through 11th so that for that week he would be owed straight time and overtime compensation for 45 hours. The proposal is to commence the workweek at 7 a. m. on March 12th. In the week from Sunday, March 12 through Saturday, March 18 the employee worked a total of 40 hours, including the 5 hours worked on Sunday. It is obvious that the allocation of the Sunday hours to the old workweek will result in higher total compensation to the employee for the 13-day period. He should, therefore, be paid (if his rate were $1 an hour) $47.50 for the period from March 6th through March 12th and $35 for the period from March 13th through March 18th.

The fact that this method of compensation is permissible under the Fair Labor Standards Act will not alter any obligation the employer may have under his employment contract to pay a greater amount of overtime compensation for the period in question.

§ 778.11 *Retroactive pay increases.* Where a retroactive pay increase is awarded to employees as a result of collective bargaining or otherwise, it operates to increase the regular rate of pay of the employee for the period of its retroactivity. Thus, if an employee is awarded a retroactive increase of 10 cents per hour, he is owed, under the Fair Labor Standards Act, a retroactive increase of 15 cents for each overtime hour he has worked during the period, no matter what the agreement of the parties may be. A retroactive pay increase in the form of a lump sum for a particular period must be prorated back over the hours of the period to which it is allocable to determine the resultant increases in

the regular rate, in precisely the same manner as a lump-sum bonus.[34]

§ 778.12 *How deductions affect the regular rate.* The word "deduction" is often loosely used to cover reductions in pay resulting from several causes:

(1) Deductions to cover the cost to the employer of furnishing board, lodging and other facilities, within the meaning of section 3 (m) of the act.

(2) Deductions for other items such as tools and uniforms which are not regarded as "facilities."

(3) Deductions authorized by the employee (such as union dues) or required by law (such as taxes and garnishments).

(4) Reductions in a fixed salary paid for a fixed workweek in weeks in which the employee fails to work the full schedule.

(5) Deductions for disciplinary reasons.

It may be briefly stated that the regular rate of pay of an employee whose earnings are subject to deductions of types (1), (2), and (3) is determined by dividing his total compensation (except statutory exclusions) before deductions by the total hours worked in the workweek.[35]

The reductions in pay described in category (4) are not properly speaking, "deductions" at all. If an employee is compensated at a fixed salary for a fixed workweek and if this salary is reduced by the amount of the average hourly earnings for each hour lost by the employee in a short workweek, the employee is, for all practical purposes, employed at an hourly rate of pay. This hourly rate is the quotient of the fixed salary divided by the fixed number of hours it is intended to compensate. If an employee is hired at a fixed salary of $40 for a 40-hour week, his hourly rate is $1. When he works only 36 hours he is therefore entitled to $36. The employer makes a "deduction" of $4 from his salary to achieve this result. The rate is not altered.

When an employee is paid a fixed salary for a workweek of variable hours (or a guarantee of pay under the provisions of section 7 (e) of the act[36]), the understanding is that the salary is due the employee in short workweeks as well as in longer ones and "deductions" of this type are not made. Therefore, in cases where the understanding of the parties is not clearly shown as to whether a fixed salary is intended to cover a fixed or a variable workweek, the practice of making "deductions" from the salary for hours not worked in short weeks will be considered strong, if not conclusive, evidence that the salary covers a fixed workweek.

Where deductions are made for disciplinary reasons (category (5)), the regular rate of an employee is computed before deductions are made, as in the case of deductions of types (1), (2), and (3) above. Thus where disciplinary deductions are made from a pieceworker's earnings, the earnings at piece rates must be totaled and divided by the total hours worked to determine the regular rate before the deduction is applied. It should be noted that although an employer may penalize an employee for lateness by deducting a half hour's straight time pay from his wages, for example, for each half hour, or fraction thereof, of his lateness, the employer must still count as hours worked all the time actually worked by the employee in determining the amount of overtime compensation due for the workweek. In no event may such deductions (or deductions of type (2)) reduce the earnings below an average of 75¢ for the first 40 hours nor cut into any part of the overtime compensation due the employee.[37]

§ 778.13 *Prizes as bonuses*—(a) *General statement.* All compensation (except statutory exclusions) paid by or on behalf of an employer to an employee as remuneration for employment must be included in the regular rate, whether paid in the form of cash or otherwise. Prizes are therefore included in the regular rate if they are paid to an employee as remuneration for employment. If therefore it is asserted that a particular prize is not to be included in the regular rate, it must be shown either that the prize was not paid to the employee for employment, or that it is not a thing of value which is part of wages.

(b) *Contests and awards.* Where the prize is awarded for the quality, quantity or efficiency of work done by the employee during his customary working hours at his normal assigned tasks (whether on the employer's premises or elsewhere) it is obviously paid as additional remuneration for employment. Thus prizes paid for cooperation, courtesy, efficiency, highest production, best attendance, best quality of work, greatest number of overtime hours worked, etc., are part of the regular rate of pay. If the prize is paid in cash, the amount paid must be allocated over the period during which it was earned to determine the resultant increase in the average hourly rate for each week of the period.[38] If the prize is merchandise, the cost to the employer is the sum which must be allocated. Where the prize is either cash or merchandise, with the choice left to the employee, the amount to be allocated is the amount (or the cost) of the actual prize he accepts.

Where the prize is awarded for activities outside the customary working hours of the employee, beyond the scope of his customary duties or away from the employer's premises, the question of whether the compensation is remuneration for employment will depend on such factors as the amount of time, if any, spent by the employee in competing, the relationship between the contest activities and the usual work of the employee, whether the competition involves work usually performed by other employees for employers, whether an employee is specifically urged to participate or led to believe that he will not merit promotion or advancement unless he participates.

By way of example, a prize paid for work performed in obtaining new business for an employer would be regarded as remuneration for employment. Although the duties of the employees who participate in the contest may not normally encompass this type of work, it is work of a kind normally performed by salesmen for their employers.[39] On the other hand, a prize or bonus paid to an employee when a sale is made by the company's sales representative to a person whom he recommended as a good sales prospect would not be regarded as compensation for services if in fact the prize-winner performed no work in securing the name of the sales prospect and spent no time on the matter for the company in any way.

(c) *Suggestion system awards.* In this connection, the question has been raised whether awards made to employees for suggestions submitted under a suggestion system plan are to be regarded as part of the regular rate. There is no hard and fast rule on this point as the term "suggestion system" has been used to describe a variety of widely differing plans. It may be generally stated, however, that prizes paid pursuant to a bona fide suggestion system plan may be excluded from the regular rate at least in situations where it is the fact that:

(1) The amount of the prize has no relation to the earnings of the employee at his job but is rather geared to the value to the company of the suggestion which is submitted; and

(2) The prize represents a bona fide award for a suggestion which is the result of additional effort or ingenuity unrelated to and outside the scope of the usual and customary duties of any employee of the class eligible to participate and the prize is not used as a substitute for wages; and

(3) No employee is required or specifically urged to participate in the suggestion system plan or led to believe that he will not merit promotion or advancement (or retention of his existing job) unless he submits suggestions; and

(4) The invitation to employee to submit suggestions is general in nature and no specific assignment is outlined to employees (either as individuals or as a group) to work on or develop; and

(5) There is no time limit during which suggestions must be submitted; and

(6) The employer has, prior to the submission of the suggestion by an employee, no notice or knowledge of the

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[34] For a discussion of the method of allocating bonuses to the hours of the period during which they were earned see § 778.6 (b).

[35] For a full discussion of deductions on categories (1), (2), and (3), see §§ 777.11 to 777.15 of this chapter.

[36] Discussed in section 778.15 of this bulletin.

[37] For a full discussion of the limits placed on such deductions, see §§ 777.11 and 777.12 of this chapter. The principles set forth with relation to deductions have no application to situations involving refusal or failure to pay the full amount of wages due. See, ibid., § 777.12; also § 778.16.

[38] For the method of allocation, see § 778.6 (b).

[39] The time spent by the employee in competing for such a prize (whether successfully or not) is working time and must be counted as such in determining overtime compensation due under the act. This subject will be more fully dicussed in Part 785 of this chapter, which will replace Interpretative Bulletin No. 13 as a statement of the principles for determining hours worked under the Fair Labor Standards Act.

fact that an employee is working on the preparation of a suggestion under circumstances indicating that the company approved the task and the schedule of work undertaken by the employee.

§ 778.14 *Lump sum attributed to overtime.* Section 7 of the act requires the payment of overtime compensation for hours worked in excess of 40 at a rate not less than one and one-half times the regular rate. The overtime rate is a rate per hour.

Where employees are paid on some basis other than an hourly rate, the regular hourly rate is derived by dividing the total compensation (except statutory exclusions) by the total hours of work for which the payment is made. To qualify as an overtime premium under section 7 (d) (5), (6) or (7), however, the extra compensation must be paid pursuant to a premium rate which is a rate per hour.[40] To qualify under section 7 (d) (5) this rate must be greater than the regular rate, either a fixed amount per hour or a multiple of the rate, such as time and one-third. To qualify under section 7 (d) (6) or (7) the rate may not be less than time and one-half the bona fide rate established in good faith for like work performed during non-overtime hours. It may not be less than time and one-half but it may be more. It may be a standard multiple greater than one and one-half (for example, double time); or it may be a fixed sum of money per hour which is, as an arithmetical fact, at least time and one-half the regular rate (for example, if the regular rate is $2 per hour, the overtime rate may not be less than $3 but it may be set at a higher arbitrary figure such as $3.20 per hour).

Where an employee works a regular fixed number of hours each week, it is, of course, proper to pay him a fixed sum, for his overtime work, determined by multiplying his overtime rate by the number of overtime hours regularly worked. However, a premium in the form of a lump sum which is paid for work performed during overtime hours without regard to the number of overtime hours worked does not qualify as an overtime premium even though the amount of money may be equal to or greater than the sum owed on a per-hour basis. For example, an agreement that provides for the payment of a flat sum of $15 to employees who work on Sunday does not provide a premium which will qualify as an overtime premium, even though the employee's straight-time rate is $1 an hour and the employee always works less than 10 hours on Sunday. Likewise, where an agreement provides for the payment for work on Sunday of either the flat sum of $15 or time and one-half the employee's regular rate for all hours worked on Sunday, whichever is greater, the $15 guaranteed payment is not an overtime premium. The reason for this is clear. If the rule were otherwise, an employer desiring to pay an employee a fixed salary regardless of the number of hours worked in excess of 40 in the workweek could merely label as overtime pay a fixed portion of such salary sufficient to take care of compensation for the maximum number of hours that would be worked. The Congressional purpose to effectuate a maximum hours standard by placing a penalty upon the performance of excessive overtime work would thus be defeated. For this reason, where extra compensation is paid in the form of a lump sum for work performed in overtime hours, it must be included in the regular rate and may not be credited against statutory overtime compensation due.

The same reasoning applies where employees are paid a flat rate for a special job performed during overtime hours, without regard to the time actually consumed in the performance.[41] The total amount paid must be included in the regular rate; no part of the amount may be credited toward statutory overtime compensation due.

It may be helpful to give a specific example illustrating the results of paying an employee on the basis under discussion.

An employment agreement calls for the payment of $1 per hour for work during the hours established in good faith as the basic workday or workweek; it provides for the payment of $1.50 per hour for work during hours outside the basic workday or workweek. It further provides that employees doing a special task outside the basic workday or workweek shall receive 6 hours' pay at the rate of $1.50 per hour (a total payment of $9) regardless of the time actually consumed in performance.

Suppose an employee works the following schedule. (The hours marked by an asterisk were spent in the performance of the special work.)

	M	T	W	T	F	S	S
Hours within basic workday	8	8	7	8	8	0	0
Pay under contract	$8	$8	$7.00	$8	$8	0	0
Hours outside basic workday	2	2	1	0	0	4	0
Pay under contract	$3	$9	$1.50	0	0	$6	0

To determine the regular rate, the total compensation (except statutory exclusions) must be divided by the total number of hours worked. The only sums to be excluded in this situation are the extra premiums provided by a premium rate (a rate per hour) for work outside the basic workday and workweek, which qualify for exclusion under section 7 (d) (7) of the act.[42] The $3 paid on Monday, the $1.50 paid on Wednesday and the $6 paid on Saturday are paid pursuant to rates which qualify as premium rates under section 7 (d) (7) of the act. The total extra compensation (over the straight-time pay for these hours) provided by these premium rates is $3.50. The sum of $3.50 should be subtracted from the total of $58.50 paid to the employee. No part of the $9 paid for the special work performed on Tuesday qualifies for exclusion. The remaining $55 must thus be divided by 48 hours to determine the regular rate—$1.146 per hour. The employee is owed one-half this rate for each of 8 overtime hours worked—$4.58. The extra compensation in the amount of $3.50 paid pursuant to premium rates which qualify as overtime premiums may be credited toward the $4.58 owed. No part of the $9 premium may be so credited. The employer must pay the employee an additional $1.08 as statutory overtime—a total of $59.58 for the week.

§ 778.15 *"Task" basis of payment.* Under some employment agreements employees are paid according to a job or task rate without regard to the number of hours consumed in completing the task. Such agreements take various forms but the two most usual forms are these:

(a) It is determined (sometimes on the basis of a time study) that an employee (or group) should complete a particular task in 8 hours. Upon the completion of the task the employee is credited with 8 "hours" of work though in fact he may have worked more or less than 8 hours to complete the task. At the end of the week the employee is paid at an established hourly rate for the first 40 of the "hours" so credited and at time and one-half such rate for the "hours" so credited in excess of 40. The number of "hours" credited to the employee bears no necessary relationship to the number of hours actually worked. It may be greater or less. "Overtime" may be payable in some cases after 20 hours of work; in others only after 50 hours or any other number of hours.

(b) A similar task is set up and 8 hours' pay at the established rate is credited for the completion of the task in 8 hours or less. If the employee fails to complete the task in 8 hours he is paid at the established rate for each of the first 8 hours he actually worked. For work in excess of 8 hours or after the task is completed (whichever occurs first) he is paid time and one-half the established rate for each hour worked. He is paid weekly overtime compensation for hours in excess of 40 actual or "task" hours (or combination thereof) for which he received pay at the established rate. "Overtime" pay under this plan may be due after 20 hours of work 25 or any other number up to 40.

These employees are in actual fact compensated on a daily rate of pay basis. In plans of the first type, the established hourly rate never controls the compensation which any employee actually receives. Therefore the established rate cannot be his regular rate. In plans of the second type the rate is operative only for the slower employees who exceed the time allotted to complete the task; for them it operates in a manner similar to a minimum hourly guarantee for piece workers.[43] On such days as it is opera-

[40] Sections 7 (e) and 7 (f) of the act provide for special exceptions from this rule. These are discussed in §§ 778.18, 778.19 and 778.20.

[41] This situation is to be distinguished from "show-up" and "call-back" pay situations discussed in § 778.7 (e). It is also to be distinguished from payment at time and one-half the applicable rate to pieceworkers for work performed during overtime hours, as discussed in § 778.19.

[42] As discussed in § 778.5 (d).

[43] See § 778.3 (b) example (2).

tive it is a genuine rate; at other times it is not.

Since the premium rates (at time and one-half the established hourly rate) are payable under both plans for hours worked within the basic or normal workday (if one is established) and without regard to whether the hours are or are not in excess of 8 per day or 40 per week, they cannot qualify as overtime premiums under section 7 (d) (5), (6) or (7) of the act. They must therefore be included in the regular rate and no part of them may be credited against statutory overtime compensation due. Under plans of the second type, however, where the pay of an employee on a given day is actually controlled by the established hourly rate (because he fails to complete the task in the 8-hour period) and he is paid at time and one-half the established rate for hours in excess of 8 hours actually worked, the premium rate paid on that day will qualify as an overtime premium under section 7 (d) (5).

An example of the operation of a plan of the second type may serve to illustrate the effects of payment on a task basis.

The employment agreement establishes a basic hourly rate of $1 per hour, provides for the payment of $1.50 per hour for overtime work (in excess of the basic workday or workweek) and defines the basic workday as 8 hours, and the basic workweek as 40 hours, Monday through Friday. It further provides that the assembling of a machine constitutes a day's work. An employee who completes the assembling job in less than 8 hours will be paid 8 hours' pay at the established rate of $1 per hour and will receive pay at the "overtime" rate for hours worked after the completion of the task.

Suppose an employee works the following hours in a particular week:

	M	T	W	T	F	S	S
Hours spent on task	6	7	7	9	8½	6	0
Day's pay under contract	$8						
	2	$8	$8	$8.00	$8.00	$12	0
Additional hours		---	2	------	½	----	---
Additional pay under contract	$3	---	$3	$1.50	$1.50	----	---

The employee has actually worked a total of 48 hours and has received a total of $61.00 for the week. The only sums which can be excluded from this total before the regular rate is determined are the extra 50-cent payments for the extra hour on Thursday and Friday made because of work actually in excess of 8 hours. The other premium rates were paid either without regard to whether or not the hours they compensated were in excess of a bona fide daily or weekly standard or without regard to the number of overtime hours worked. Only the sum of $1 is excluded from the total. The remaining $60 is divided by 48 hours to determine the regular rate—$1.25 per hour. One-half this rate is due as extra compensation for each of the 8 overtime hours—$5.00. The $1 paid for excessive hours may be credited and the balance—$4.00—is owed in addition to the $61 due under the contract.

§ 778.16 *Effect of failure to count or pay for certain working hours.* In determining the number of hours for which overtime compensation is due, all hours worked by an employee for an employer in a particular workweek must be counted.[44] Overtime compensation, at time and one-half the regular rate of pay, must be paid for each hour worked in excess of 40. Overtime compensation cannot be said to have been paid to an employee unless all the straight-time compensation due him under his contract (express or implied) or under any applicable statue has been paid.

While it is permissible for an employer and an employee to agree upon different base rates of pay for different types of work, it has already been pointed out that where a rate has been agreed upon as applicable to a particular type of work the parties cannot lawfully agree that the rate for that work shall be lower merely because the work is performed during overtime hours, or during a week in which overtime is worked.[45] Since a lower rate cannot lawfully be set for overtime hours it is obvious that the parties cannot lawfully agree that the working time will not be paid for at all. An agreement that only the first 8 hours of work on any days or only the hours worked between certain fixed hours of the day or only the first 40 hours of any week will be counted as working time will clearly fail of its evasive purpose. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be compensated unless authorized in advance, will not impair the employee's right to compensation for work which he is actually suffered or permitted to perform.

An agreement not to compensate employees for certain non-overtime hours stands on no better footing since it would have the same effect of diminishing the employee's total overtime compensation. An agreement, for example, to pay an employee $1 an hour for the first 35 hours, nothing for the hours between 35 and 40 and $1.50 an hour for the hours in excess of 40 would not meet the overtime requirements of the act. The employee would have to be paid $5 for the 5 hours worked between 35 and 40 before any sums ostensibly paid for overtime could be credited toward overtime compensation due under the act.

Some agreements provide for payment only for the hours spent in productive work; the hours spent in waiting time, time spent in travel on the employer's behalf or similar nonproductive time are not compensable and in some cases are neither counted nor compensated.

Payment pursuant to such an agreement will not comply with the Fair Labor Standards Act; such nonproductive working hours must be counted and paid for. The parties may agree to compensate nonproductive hours at a rate (at least the minimum) which is lower than the rate applicable to productive work. In such a case, the regular rate is the weighted average of the two rates,[46] and the employee is owed compensation at his regular rate for all of the first 40 hours and at time and one-half this rate for all hours in excess of 40. In the absence of any agreement setting a different rate for nonproductive hours, the employee would be owed compensation at the regular hourly rate set for productive work for all hours up to 40 and at time and one-half that rate for hours in excess of 40.

The situation is to be distinguished from one in which such nonproductive hours are properly counted as working time but no special hourly rate is assigned to such hours because it is understood by the parties that the other compensation received by the employee is intended to cover pay for such hours. For example, while it is not proper for an employer to agree with his pieceworkers that the hours spent in down-time (waiting for work) will not be paid for or will be neither paid for nor counted, it is permissible for him to agree that the pay the employees will earn at piece rates is intended to compensate them for all hours worked, the productive as well as the nonproductive hours. If this is the agreement of the parties, the regular rate of the pieceworker will be the rate determined by dividing the total piecework earnings by the total hours worked (both productive and nonproductive) in the workweek.

Extra compensation (one-half the rate as so determined) would, of course, be due for each hour worked in excess of 40 in the workweek.

§ 778.17 *Effect of paying for but not counting certain hours.* In some contracts provision is made for payment for certain hours, which constitute working time under the act, coupled with a provision that these hours will not be counted as working time. Such a provision is a nullity. If the hours in question are hours worked, they must be counted as such in determining whether more than 40 hours have been worked in the workweek. If more than 40 hours have been worked, the employee must be paid overtime compensation at time and one-half his regular rate for all overtime hours.

A provision that certain hours will be compensated only at straight-time rates is likewise invalid. If the hours are actually hours worked in excess of 40, extra half-time compensation will be due, regardless of any agreement to the contrary.

In certain cases an agreement provides for compensation for hours spent in certain types of activities which would not be regarded as working time under the act if no compensation were provided. Preliminary and postliminary activities, time spent in travel outside the hours of the normal workday and time spent in eating meals between working hours fall in this category. The agreement of the parties to provide compensation for such hours implies an agreement to regard them as working time although they are not otherwise required to be so regarded under the act. The agreement of the

[44] As to what hours must be counted as hours worked for an employer, see § 778.7 (f) and the footnote thereto.

[45] See § 778.9.

[46] Discussed in § 778.3 (c). See also § 778.19 (c) for the method of computing overtime pay on the applicable rate.

parties will be respected, if reasonable.[47] However, the compensation paid for such hours will, in any event be regarded as part of the regular rate of pay.

§ 778.18 *Guaranteed compensation which includes overtime pay (sec. 7 (e))*—(a) *The statutory exception.* Sec-7 (e) of the act provides:

> No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of forty hours if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in section 6 (a) and compensation at not less than one and one-half times such rate for all hours worked in excess of forty in any workweek, and (2) provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

This is the only provision in the act which allows an employer to pay the same total compensation each week to an employee who works overtime and whose hours of work vary from week to week.[48] Unless the pay arrangements in a particular situation meet the requirements of section 7 (e) as set forth, all the compensation received by the employee under a guaranteed pay plan is included in his regular rate and no part of such guaranteed pay may be credited toward overtime compensation due under the act.

The exception is designed to provide a means whereby the employer of an employee whose duties necessitate irregular hours of work and whose total wages, if computed on an hourly rate basis would of necessity vary widely from week to week, may guarantee the payment week-in, week-out of at least a fixed amount based on his regular hourly rate. Such a contract affords to the employee the security of a regular weekly income and benefits the employer by enabling him to anticipate and control in advance at least some part of his labor costs. However, a guaranteed wage plan also provides a means of limiting overtime costs so that wide leeway is provided for working employees overtime without increasing the cost to the employer, which he would otherwise incur under the act for working employees in excess of the statutory maximum of 40 hours. Recognizing both the inherent advantages and disadvantages of guaranteed wage plans, when viewed in this light. Congress sought to strike a balance between them which would, on the one hand, provide a feasible method of guaranteeing pay to employees who needed this protection without, on the other hand, nullifying the overtime requirements of the act. The provisions of section 7 (e) set forth the conditions under which, in the view of Congress, this may be done. Plans which do not meet these conditions were not thought to provide sufficient advantage to the employee to justify Congress in relieving employers of the overtime liability of section 7 (a).[49]

Section 7 (e) is an exemption from the overtime provisions of the act. No employer will be exempt from the duty of computing overtime compensation for an employee under section 7 (a) unless the employee is paid pursuant to a plan which actually meets all the requirements of the exemption. These requirements will be discussed separately in the ensuing paragraphs.

(b) *What types of employees are affected.* The type of employment agreement permitted under section 7 (e) can be made only with (or by his representatives on behalf of) an employee whose "duties * * * necessitate irregular hours of work." It is clear that no contract made with an employee who works a regularly scheduled workweek or whose schedule involves alternating fixed workweeks will qualify under this subsection. Even if an employee does in fact work a variable workweek, the question must still be asked whether his duties necessitate irregular hours of work. The subsection is not designed to apply in a situation where the hours of work vary from week to week at the discretion of the employer or the employee, nor to a situation where the employee works an irregular number of hours according to a predetermined schedule. The nature of the employee's duties must be such that neither he nor his employer can either control or anticipate with any degree of certainty the number of hours he must work from week to week. Some examples of the types of employees who may meet this criterion would be outside buyers, on-call servicemen, insurance adjusters, newspaper reporters and photographers, propmen, script girls and others engaged in similar work in the motion picture industry, fire fighters, troubleshooters and the like. There are some employees in these groups whose hours of work are conditioned by factors beyond the control of their employer or themselves. However, the mere fact that an employee is engaged in one of the jobs just listed, for example, does not mean that his duties necessitate irregular hours. It is always a question of fact whether the particular employee's duties do or do not necessitate irregular hours. Many employees not listed here may qualify. Office employees whose duties compel them to work variable hours could also be in this category. For example, the confidential secretary of a top executive whose hours of work are irregular and unpredictable might also be compelled by the nature of her duties to work variable and unpredictable hours. This would not ordinarily be true of a stenographer or file clerk, nor would an employee who only rarely or in emergencies is called upon to work outside a regular schedule qualify for this exemption.

(c) *The nature of the contract.* Payment must be made "pursuant to a bona fide individual contract or pursuant to an agreement made as a result of collective bargaining by representatives of employees." It cannot be a one-sided affair determinable only by examination of the employer's books. The employee must not only be aware of but must have agreed to the method of compensation in advance of performing the work. Collective bargaining agreements in general are formal agreements which have been reduced to writing, but an individual employment contract may be either oral or written. While there is no requirement in section 7 (e) that the agreement or contract be in writing, it is certainly desirable to reduce the agreement to writing, since a contract of this character is rather complicated and proof both of its existence and of its compliance with the various requirements of the section may be difficult if it is not in written form. Furthermore, the contract must be "bona fide". This implies that both the making of the contract and the settlement of its terms were done in good faith.

(d) *The specified regular rate.* The contract must specify " a regular rate of pay of not less than the minimum hourly rate provided in section 6 (a)." The word "regular" describing the rate in this provision is not to be treated as surplusage. To understand the nature of this requirement it is important to consider the past history of this type of agreement in the courts. In both of the two cases before it, the Supreme Court found that the relationship between the hourly rate specified in the contract and the amount guaranteed was such that the employee in a substantial portion of the workweeks of the period examined by the court worked sufficient hours to earn in excess of the guaranteed amount and in those workweeks was paid at the specified hourly rate for the first 40 hours and at time and one-half such rate for

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[47] The Portal Act requires the counting of preliminary and postliminary activities which are compensable. See Part 790 of this chapter.

[48] See §§ 778.5 (f), 778.9, 778.14, and 778.15 for further discussion of this basic approach. See also Part 781 of this chapter which discusses guaranteed wage plans submitted under certain types of collective bargaining agreements pursuant to section 7 (b) (1) and (2) of the act.

[49] This section of the act is based in part on the decision of the Supreme Court in the cases of Walling v. A. H. Belo Company, 316 U. S. 624, and Walling v. Halliburton Oil Well Cementing Co., 325 U. S. 427, where the Court approved the payment of guaranteed amounts to employees. In these cases the Court found as a fact that the rates specified in the contracts' were the regular rates of pay of the employees, bearing a reasonable relation to the amount guaranteed (as opposed to arbitrary or artificial rates) and that the hours of work of the employees varied widely. In the Belo case the employees were newspaper reporters whose workweek fluctuated from 30 to over 100 hours of work; in the Halliburton case the employees were outside field service employees of a company engaged in the business of cementing, testing and otherwise servicing oil wells. In the Belo case employees were guaranteed an amount covering compensation for less than 60 hours but in the Halliburton case employees had to work in excess of 84 hours per week before any additional overtime pay (over and above the guaranteed amount) was due in any workweek. In both cases the employees did actually exceed the number of hours for which pay was guaranteed on fairly frequent occasions, so that the hourly rate stipulated in the contract in each case was often operative and did actually control the compensation received by the employees.

hours in excess of 40.[50] The fact that section 7 (e) requires that a contract, to qualify an employee for exemption under section 7 (e), must specify a "regular rate", indicates that this criterion of these two cases is still important.

The regular rate of pay specified in the contract may not be less than the minimum rate. There is no requirement, however, that the regular rate specified be equal to the regular rate at which the employee was formerly employed before the contract was entered into. The specified regular rate may be any amount (at least 75 cents) which the parties agreed to and which can reasonably be expected to be operative in controlling the employee's compensation.

The rate specified in the contract must also be a "regular" rate which is operative in determining the total amount of the employee's compensation. Suppose, for example, that the compensation of an employee is normally made up in part by regular bonuses, commissions, or the like. In the past he has been employed at an hourly rate of $1.50 per hour in addition to which he has received a cost-of-living bonus of $5 a week and a 2 percent commission on sales which averaged $10 per week. It is now proposed to employ him under a guaranteed pay contract which specifies a rate of $1.50 per hour and guarantees $70 per week, but he will continue to receive his cost-of-living bonus and commissions in addition to the guaranteed pay. Bonuses and commissions of this type are, of course, included in the "regular rate" as defined in section 7 (d). It is also apparent that the $1.50 rate specified in the contract is not a "regular rate" under the requirements of section 7 (e) since it never controls or determines the total compensation he receives. For this reason, it is not possible to enter into a guaranteed pay agreement of the type permitted under section 7 (e) with an employee whose regular weekly earnings are made up in part by the payment of regular bonuses and commissions of this type. This is so because even in weeks in which the employee works sufficient hours to exceed, at his hourly rate, the sum guaranteed, his total compensation is controlled by the bonus and the amount of commissions earned as well as by the hourly rate.

In order to qualify as a "regular rate" under section 7 (e) the rate specified in the contract together with the guarantee must be the actual measure of the regular wages which the employee receives. However, the payment of extra compensation, over and above the guaranteed amount, by way of extra premiums for work on holidays, or for extraordinarily excessive work (such as for work in excess of 16 consecutive hours in a day, or for work in excess of six consecutive days of work), year-end bonuses and similar payments which are not regularly paid as part of the employee's usual wages will not invalidate a contract which otherwise qualifies under section 7 (e).

(e) *Provision for overtime pay.* The contract must provide for compensation at not less than one and one-half times the specified regular rate for all hours worked in excess of 40 in the workweek. All excessive hours, not merely those covered by the guarantee, must be compensated at time and one-half (or a higher multiple) of the specified regular rate. A contract which guaranteed a weekly salary of $75, specified a rate of $1.50 per hour, and provided that not less than time and one-half such rate would be paid only for all hours up to and including 46⅔ hours would not qualify under this section. The contract must provide for payment at time and one-half (or more) for all hours in excess of 40 in any workweek. A contract may provide a specific overtime rate greater than time and one-half the specified rate for example, double time. If it does provide a specific overtime rate it must provide that such rate will be paid for all hours worked in excess of 40.

(f) *The guaranty.* The statute provides that the guaranty must be a weekly guaranty. A guaranty of monthly, semi-monthly or bi-weekly pay (which would allow averaging wages over more than one workweek) does not qualify under this subsection. Obviously guarantees for periods less than a workweek do not qualify. Whatever sum is guaranteed must be paid in full in all workweeks, however short, in which the employee performs any amount of work for the employer. The amount of the guaranty may not be subject to proration or deduction in short weeks.

The contract must provide a guaranty of pay. The amount must be specified. A mere guaranty to provide work for a particular number of hours does not qualify under this section.

The pay guaranteed must be "for not more than 60 hours based on the rates so specified."

The amount of weekly pay guaranteed may not exceed compensation due at the specified regular rate for 40 hours and at the specified overtime rate for 20 additional hours. Thus, if the specified regular rate is $1 an hour, the weekly guaranty cannot be greater than $70. This does not mean that an employee employed pursuant to a guaranteed pay contract under this section may not work more than 60 hours in any week; it means merely that pay in an amount sufficient to compensate for a greater number of hours cannot be covered by the guaranteed pay. If he works in excess of 60 hours he must be paid, for each hour worked in excess of 60, overtime compensation as provided in the contract, in addition to the guaranteed amount.

While the guaranteed pay may not cover more than 60 hours, the contract may guarantee pay for a lesser number of hours. In order for a contract to qualify as a bona fide contract for an employee whose duties necessitate irregular hours of work, the number of hours for which pay is guaranteed must bear a reasonable relation to the number of hours the employee may be expected to work. A guaranty of pay for 60 hours to an employee whose duties necessitate irregular hours of work which can reasonably be expected to range no higher than 50 hours would not qualify as a bona fide contract under this section. The rate specified in such a contract would be wholly fictitious and therefore would not be a "regular rate" as discussed above. When the parties enter into a guaranteed pay contract, therefore, they should determine, as far as possible, the range of hours the employee is likely to work. In deciding the amount of the guaranty they should not choose a guaranty of pay to cover the maximum number of hours which the employee will be likely to work at any time but should rather select a figure low enough so that it may reasonably be expected that the rate will be operative in a significant number of workweeks. Contracts should be reexamined periodically (at least every six months) to determine whether the employee's rate is a bona fide rate in that it has in fact been operative in a signficant number of workweeks. If the reasonable expectation of the parties has not been borne out, the contract should be amended accordingly.

The guaranty of pay must be "based on the rates so specified" in the contract. If the contract specifies a regular rate of $1.00, and an overtime rate of $1.50 and guarantees pay for 50 hours, the amount of the guaranty must be $55, if it is to be based on the rates so specified. A guaranty of $75 in such a situation would not, obviously, be based on the rates specified in the contract.

Moreover, a contract which provides a variety of different rates for shift differentials, arduous or hazardous work, stand-by time, piece-rate incentive bonuses, commissions or the like in addition to a specified regular rate and a specified overtime rate with a guaranty of pay of, say, $75 from all sources would not qualify under this section, since the guaranty of pay in such a case is not based on the regular and overtime rates specified in the contract.

(g) *"Approval" of contracts under section 7 (e).* There is no requirement that a contract, to qualify under section 7 (e), must be approved by the Administrator. The question of whether a contract which purports to qualify an employee for exemption under section 7 (e) meets the requirements is a matter for determination by the courts. This determination will in all cases depend not merely on the wording of the contract but upon the actual practice of the parties thereunder. It will turn on the question of whether the duties of the employee in fact necessitate irregular hours, whether the rate specified in the contract is a "regular rate"—that is, whether it was designed to be actually operative in determining the employee's compensation—whether the contract was entered into in good faith, whether the guaranty of pay is in fact based on the regular and overtime rates specified in the contract. While the Administrator does have the authority to issue an advisory opinion as to whether or not a pay arrangement accords with the requirements of section 7 (e) he can do so only if he has knowledge of these facts.

[50] See footnote 49. As the Supreme Court said in the Halliburton case: "In *Belo* itself, the specified basic hourly rate was held to be the actual regular rate because, as to weeks in which employees worked more than 54½ hours, the specified rate determined the amount of compensation actually payable; * * *".

As a guide to employers, it may be helpful to describe a fact situation in which the making of a guaranteed salary contract would be appropriate and to set forth the terms of a contract which would comply, in the circumstances described, with the provisions of section 7 (e). *Example:* An employee is employed as an insurance claims adjuster; because of the fact that he must visit claimants and witnesses at their convenience, it is impossible for him or his employer to control the hours which he must work to perform his duties. During the past six months his hours of work have varied from a low of 30 hours to a high of 58 hours. His average workweek for the period was 48 hours. In about 80 percent of the workweeks he worked less than 52 hours. It is expected that his hours of work will continue to follow this pattern. The parties agree upon a regular rate of $1.30 per hour. In order to provide for the employee the security of a regular weekly income the parties further agree to enter into a contract which provides a weekly guaranty of pay. A guaranty of pay for a workweek somewhere between 48 hours (his average week) and 52 would be reasonable. In the circumstances described, the following contract would be appropriate.

The X company hereby agrees to employ John Doe as a claims adjuster at a regular hourly rate of pay of $1.30 per hour for the first 40 hours in any workweek and at the rate of $1.95 per hour for all hours in excess of 40 in any workweek, with the guarantee that John Doe will receive, in any week in which he performs any work for the company, the sum of $71.50 as total compensation, for all work performed up to and including 50 hours in such workweek.

The foregoing is merely an example and nothing herein is intended to imply that contracts which differ from the example will not meet the requirements of section 7 (e).

§ 778.19 *Computing overtime pay on the rate applicable to the type of work performed in overtime hours (sec. 7 (f) (1) and (2)—(a) The statutory provisions.* Sections 7 (f) (1) and (2) of the act provide:

> No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of forty hours if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of forty hours—
>
> (1) In the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or
>
> (2) In the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; * * *
>
> and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (d) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

The purpose of these provisions is to provide an exception from the requirement of computing overtime pay at time and one-half the regular rate for hours worked after 40 in the workweek and to allow, under specified conditions, a simpler method of computing overtime pay for employees paid on the basis of a piece rate, or at a variety of hourly rates or piece rates, or a combination thereof. This provision is not designed to exclude any group of employees from the overtime benefits of the act. The intent of the provision is merely to simplify the method of computation while insuring the receipt by the affected employees of substantially the same amount of overtime compensation.

First, in order to insure that the method of computing overtime pay permitted in this section will not in any circumstances be seized upon as a device for avoiding payment of the minimum wage due for each hour, the requirement must first be met that the employee's average hourly earnings for the workweek (exclusive of overtime pay and of all other pay which is excluded from the regular rate) are not less than the minimum. This requirement insures that the employer cannot pay subminimum nonovertime rates with a view to offsetting part of the compensation earned during the overtime hours against the minimum wage due for the workweek.

Second, in order to insure that the method of computing overtime pay permitted in this section will not be used to circumvent or avoid the payment of proper overtime compensation due on other sums paid to employees, such as bonuses which are part of the regular rate, the section requires that extra overtime compensation must be properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(b) *Pieceworkers.* Under this section an employee who is paid on the basis of a piece rate for the work performed during nonovertime hours, may agree with his employer in advance of the performance of the work that he shall be paid at the rate of time and one-half this piece rate for each piece produced during the overtime hours. No additional overtime pay will be due under the act provided that the general conditions discussed in paragraph (a) of this section are met and:

(1) The piece rate is a bona fide rate;

(2) The overtime hours for which the overtime rate is paid qualify as overtime hours under section 7 (d) (5), (6), or (7);

(3) The number of overtime hours for which time and one-half the piece rate is paid equals or exceeds the number of hours worked in excess of 40 in the workweek; and

(4) The compensation paid for the overtime hours is at least equal to time and one-half the minimum rate ($1.125 per hour) for the total number of hours worked in excess of 40.

The piece rate will be regarded as bona fide if it is the rate actually paid for work performed during the nonovertime hours and if it is sufficient to yield at least the minimum wage per hour.

If a pieceworker works at two or more kinds of work for which different straight time piece rates have been established, and if by agreement he is paid at time and one-half whichever straight time piece rate is applicable to the work performed during the overtime hours, such piece rate or rates must meet all the tests set forth in this paragraph and the general tests set forth in paragraph (a) of this section in order to satisfy the overtime requirements of the act under section 7 (f).

(c) *Hourly workers employed at two or more jobs.* Under section 7 (f) (2) an employee who performs two or more different kinds of work, for which different straight time hourly rates are established, may agree with his employer in advance of the performance of the work that he will be paid during overtime hours time and one-half the rate established for the type of work he is performing during such hours. No additional overtime pay will be due under the act provided that the general requirements set forth in paragraph (a) of this section are met and:

(1) The hourly rate upon which the overtime rate is based is a bona fide rate;

(2) The overtime hours for which the overtime rate is paid qualify as overtime hours under section 7 (d) (5), (6) or (7); and

(3) The number of overtime hours for which the overtime rate is paid equals or exceeds the number of hours worked in excess of 40 in the workweek.

An hourly rate will be regarded as a bona fide rate for a particular kind of work if it is equal to or greater than the minimum and if it is the rate actually paid for such work when performed during the nonovertime hours.

(d) *Combined hourly rates and piece rates.* Where an employee works at a combination of hourly and piece rates, the payment of time and one-half the hourly or piece rate applicable to the type of work being performed during the overtime hours will meet the overtime requirements of the act if the provisions concerning piece rates (as discussed in paragraph (b) of this section) and those concerning hourly rates (as discussed in paragraph (c) of this section) are respectively met.

(e) *Offset hour for hour.* Where overtime rates are paid pursuant to statute or contract for hours in excess of 8 in a day or 40 in a week or in excess of the employees' normal working hours or regular working hours (as under section 7 (d) (6)), or pursuant to an applicable employment agreement for work outside of the hours established in good faith by the agreement as the basic, normal or regular workday (not exceeding 8 hours) or workweek (not exceeding 40 hours) (under section 7 (d) (7)), the requirements of section 7 (f) (1) and 7 (f) (2) will be met if the number of such hours during which overtime rates were paid equals or exceeds the number of hours

worked in excess of 40 in the workweek. It is not necessary to determine whether the total amount of compensation paid for such hours equals or exceeds the amount of compensation which would be due at the applicable rates for work performed during the hours after the fortieth in any workweek.

§ 778.20 *Computing overtime pay on an "established" rate (sec. 7 (f) (3)).* Section 7 (f) (3) of the act provides:

(f) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of forty hours if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to an employee for the number of hours worked by him in such workweek in excess of forty hours * * *

(3) Is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: *Provided,* That the rate so established shall be authorized by regulation by the Administrator as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if (1) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (d) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

Regulations issued pursuant to this section will be published in the FEDERAL REGISTER as Part 548 of this chapter. Payments made in conformance with the regulations in this part satisfy the overtime requirements of the act.

PAY PLANS WHICH CIRCUMVENT THE ACT

§ 778.21 *Artificial regular rates.* Since the term "regular rate" is defined to include all remuneration for employment (except statutory exclusions) whether derived from hourly rates, piece rates, production bonuses or other sources, the overtime provisions of the act cannot be avoided by setting an artificially low hourly rate upon which overtime pay is to be based and making up the additional compensation due to employees by other means. The established hourly rate is the "regular rate" to an employee only if the hourly earnings are the sole source of his compensation. Payment for overtime on the basis of an artificial "regular" rate will not result in compliance with the overtime provisions of the act.

It may be helpful to describe a few schemes that have been attempted and to indicate the pitfalls inherent in the adoption of such schemes. The device of the varying rate which decreases as the length of the workweek increases has already been discussed in § 778.9 (a) (6). It might be well, however, to re-emphasize that the hourly rate paid for the identical work during the hours in excess of 40 cannot be lower than the rate paid for the first 40 hours nor can the hourly rate vary from week to week inversely with the length of the workweek. It has been pointed out that, except in limited situations under contracts which qualify under section 7 (e), it is not possible for an employer lawfully to agree with his employees that they will receive the same total sum, comprising both straight time and overtime compensation, in all weeks without regard to the number of overtime hours (if any) worked in any workweek. The result cannot be achieved by the payment of a fixed salary or by the payment of a lump sum for overtime or by any other method or device.

Where the employee is hired at a low hourly rate supplemented by facilities furnished by the employer, bonuses (other than those excluded under section 7 (d)), commissions, pay ostensibly (but not actually) made for idle hours, or the like, his regular rate is not the hourly rate but is the rate determined by dividing his total compensation from all these sources in any workweek by the number of hours worked in the week. Payment of overtime compensation based on the hourly rate alone in such a situation would not meet the overtime requirements of the act.

One scheme to evade the full penalty of the act was that of setting an arbitrary low hourly rate upon which overtime compensation at time and one-half would be computed for all hours worked in excess of 40; coupled with this arrangement was a guarantee that if the employee's straight time and overtime compensation, based on this rate, fell short, in any week, of the compensation that would be due on a piece rate basis of x cents per piece, the employee would be paid on the piece rate basis instead. The hourly rate was set so low that it never (or seldom) was operative. This scheme was found by the Supreme Court to be violative of the overtime provisions of the act in the case of Walling v. Youngerman-Reynolds Hardwood Co., 325 U. S. 427. The regular rate of the employee involved was found to be the quotient of total piece rate earnings paid in any week divided by the total hours worked in such week.

The scheme is no better if the employer agrees to pay straight time and overtime compensation on the arbitrary hourly rates and to make up the difference between this total sum and the piece-rate total in the form of a bonus to each employee.[51]

§ 778.22 *The "split-day" plan.* Another device designed to evade the overtime requirements of the act was a plan known as the "Poxon" or "split-day" plan. Under this plan the normal or regular workday is artificially divided into two portions one of which is arbitrarily labeled the "straight time" portion of the day and the other the "overtime" portion. Under such a plan, an employee who would ordinarily command an hourly rate of pay well in excess of the minimum for his work is assigned a low hourly rate (often the minimum) for the first hour (or the first 2 or 4 hours) of each day. This rate is designated as the regular rate; time and one-half such rate is paid for each additional hour worked during the workday. Thus, for example, an employee is arbitrarily assigned an hourly rate of $1.00 per hour under a contract which provides for the payment of so-called "overtime" for all hours in excess of 4 per day. Thus, for the normal or regular 8-hour day the employee would receive $4 for the first 4 hours and $6 for the remaining 4 hours; a total of $10 for 8 hours. (This is exactly what he would receive at the straight-time rate of $1.25 per hour.) On the sixth 8-hour day the employee likewise receives $10 and the employer claims to owe no additional overtime pay under the statute since he has already compensated the employee at "overtime" rates for 20 hours of the workweek.

Such a division of the normal 8-hour workday into 4 straight-time hours and 4 overtime hours is purely fictitious. The employee is not paid at the rate of $1.00 an hour and the alleged overtime rate of $1.50 per hour is not paid for overtime work. It is not geared either to hours "in excess of the employee's normal working hours or regular working hours" (section 7 (d) (5)) or for work "outside of the hours established in good faith * * * as the basic, normal or regular workday" (section 7 (d) (7)) and it cannot therefore qualify as an overtime rate. The regular rate of pay of the employee in this situation is $1.25 per hour and he is owed additional overtime compensation, based on this rate, for all hours in excess of 40. This rule was settled by the Supreme Court in the case of Walling v. Helmerich & Payne, 323 U. S. 37, and its validity has been re-emphasized by the definition of the term "regular rate" in section 7 (d) of the act as amended.

§ 778.23 *Pseudo-bonuses*—(a) *Artificially labeling part of the regular wages a "bonus."* The term "bonus" is properly applied to a sum which is paid as an addition to total wages, usually because of extra effort of one kind or another, or as a reward for loyal service or as a gift. The term is improperly applied if it is used to designate a portion of regular wages which the employee is entitled to receive under his regular wage contract.

For example, if an employer has agreed to pay an employee $50.00 a week without regard to the number of hours worked, the regular rate of pay of the employee is determined each week by dividing the $50.00 salary by the number of hours worked in the week. The situation is not altered if the employer continues to pay the employee the same $50.00 each week but arbitrarily breaks the sum down into wages for the first 40 hours at an hourly rate of 75 cents an hour, overtime compensation at $1.125 per hour and labels the balance a "bonus" (which will vary from week to week, becoming smaller as the hours increase and vanishing entirely in any week in which the employee works 57⅓ hours or more). The situation is in no way bettered if the employer, standing by the logic of his labels, proceeds to compute and pay overtime compensation due on this "bonus" by prorating it back over the hours of

[51] For further discussion of the refinements of this plan see § 778.23.

the workweek. Overtime compensation has still not been properly computed for this employee at his regular rate.

An illustration of how the plan works over a three-week period may serve to illustrate this principle more clearly:

In the first week the employee works 40 hours and receives $50.00. The books show he has received $30.00 (40 hours × 75 cents an hour) as wages and $20.00 as bonus. No overtime has been worked so no overtime compensation is due.

In the second week he works 50 hours and receives $50.00. The books show he has received $30.00 for the first 40 hours and $11.25 (10 hours × $1.125 an hour) for the 10 hours over 40, or a total of $41.25 as wages, and the balance as a bonus of $8.75. Overtime compensation is then computed by the employer by dividing $8.75 by 50 hours to discover the average hourly increase resulting from the bonus—18 cents per hour—and half this rate is paid for the 10 overtime hours—$1.80. This is improper. The employee's regular rate in this week is $1.00 per hour. He is owed $55.00, not $51.80.

In the third week the employee works 55 hours and is paid $50.00. The books show that the employee received $30.00 for the first 40 hours and $16.88 (15 hours × $1.125 per hour) for the 15 hours over 40, or a total of $46.88, and the balance as a bonus of $3.22. Overtime pay due on the "bonus" is found to be 45 cents. This is improper. The employee's regular rate in this week is 91 cents and he is owned $56.82, not $50.45.

Similar schemes have been devised for piece-rate employees. The method is the same. An employee is assigned an arbitrary hourly rate (usually the minimum) and it is agreed that his straight-time and overtime earnings will be computed on this rate but that if these earnings do not amount to the sum he would have earned had his earnings been computed on a piece-rate basis of "x" cents per piece, he will be paid the difference as a "bonus". This subterfuge does not serve to conceal the fact that this employee is actually compensated on a piece-rate basis, that there is no bonus and that his regular rate is the quotient of piece-rate earnings divided by hours worked.[52]

The general rule may be stated that whenever the employee is guaranteed a fixed or determinable sum as his wages each week, no part of this sum is a true bonus and the rules for determining overtime due on bonuses do not apply.

(b) *Pseudo "percentage bonuses".* The device does not improve when it becomes more complex. If no true bonus in a flat sum amount can be legitimately separated out of the employee's wages, certainly no bonus in the form of a percentage or total earnings can be so derived. Yet some employers, seeking to evade the overtime requirement of the act entirely while apparently complying with every requirement, have devised schemes of this kind. Like the employer described in the preceding subsection, such an employer pays his employee $50 a week without regard to the number of hours worked. He also sets up a fictitious regular rate of 75 cents an hour. In a week in which the employee works 50 hours his records show the following:

(The material in brackets does not usually appear in the final records):

Straight time for 40 hours @ 75¢ an hour	$30.00
Overtime for 10 hours @ $1.125 an hour	11.25
	41.25
[$50—$41.25=$8.75, total amount to be distributed as a bonus. $8.75/$41.25=21.2%]	
Percentage of total earnings bonus @ 21.2% of $41.25	8.75
Total	50.00

Obviously this employee can no more be said to be receiving proper overtime than the employee in the previous example. This employee's regular rate in this week is $1.00 per hour and he is owed a total of $55 for the week.

No better claim of compliance can be made by an employer who arbitrarily pieces out a bonus from all or a part of group wages. The scheme tends to be more complex, but the principle is the same and the same results follow.

One relatively simple example of such a scheme is the following:

Two employees are hired as salesmen on an hourly-rate-plus-commission basis. Each is hired at the rate of $1.00 an hour for the first 40 hours and $1.50 an hour for overtime and, in addition, is entitled to a share in commissions earned by each at the rate of one percent of sales. In a given week one employee works 40 hours and the other works 50. Together they sell $950 worth of merchandise and are thus entitled to $9.50 as commissions. In order to avoid payment of overtime on the commissions, the employer decides to distribute the $9.50 in the form of a percentage of total earnings. The total wages of the two employees is $95.00 in the particular week. The $9.50 commissions represent 10 percent of this figure. The employer therefore pays a 10-percent "bonus" to each employee on his total earnings. One receives $4.00 as bonus, the other $5.50. The employer claims that no additional overtime is due because the "bonus" was a percentage of total earnings and the percentage was determined before the amount due any individual employee had been determined.

If the commissions were a bonus at all, the method of distribution might be proper. But a bonus, as has been stated, is a sum paid in addition to regular wages and not as a part of such wages. The employees have contracted to work on a wage-plus-group-commission basis. No extra pay—over and above the contract wage—is involved. As a regular part of their duties, the employees make sales and regularly receive a one-percent commission on the amount of the sale. Moreover, since the employees are owed the commissions in an amount related only to the amount of total sales and without regard to the number of hours worked, no part of such commissions is paid as overtime compensation.

In the example just given the employer sought only to relieve himself of the burden of paying proper overtime on part of the wages. The example must grow more complex but the principle does not change when the employer seeks to relieve himself of the entire burden of overtime by a fictitious division of regular group wages into hourly earnings and "bonus." This scheme is usually tried with respect to employees who work solely on a group piece rate or group commission basis. For simplicity we will assume that the two employees in the previous example receive no base hourly rate but are working solely on a commission basis—11 percent of total sales. In order for the scheme to function the employer must provide a minimum hourly guarantee. The minimum rate of 75 cents is best suited to his purpose for it provides the greatest leeway as to the number of hours that may be worked without payment of any additional overtime compensation whatever, but purely for simplicity in computation, the rate of $1.00 will be used in this example. In a week in which the total sales amount to $950 the two employees are together entitled to $104.50 (11%). They will receive this amount regardless of the number of hours they have worked individually or collectively. If they work the same number of hours each will get half—$52.25. This would be true whether the hours worked by each were 40, 43, 45 or 48 hours. Only the bookkeeping is altered. If each works 40 hours the record will show for each:

Wages @ $1.00 per hour	$40.00
Bonus	12.25
Total	52.25

If each works 45 hours, the record will show:

Wages @ $1 per hour for 40 hours	$40.00
Overtime pay @ $1.50 per hour for 5 hours	7.50
Bonus @ 10% of total earnings (10% of $47.50)	4.75
Total	52.25

The total amount earned by each employee is exactly the same in each of the two weeks because it is determined not by the hours he works nor by the established rate but only by two unrelated factors: the total amount of sales and the relation between his hours of work and those of the other employees;—not the total hours worked by either or both but merely the ratio of the two.

This will become apparent if we look at a workweek in which one works 40 hours and the other 50. The books then read this way:

1st employee:	
Wages @ $1 per hour for 40 hours	$40.00
Bonus @ 10% of total earnings	4.00
Total	44.00
2d employee:	
Wages @ $1 per hour for 40 hours	$40.00
Overtime pay @ $1.50 per hour for 10 hours	15.00
Bonus @ 10% of total earnings (10% of $55)	5.50
Total	60.50

Note that in each case, as long as the amount of sales remains constant, the two employees together earn $104.50 regardless of whether either works overtime, or both do, and regardless of the number of hours of overtime worked. The first employee worked 40 hours in the first week and received $52.25, yet he received only $44 for a 40-hour week in the third week of the series. The only reason for this was that in the third

[52] See Walling v. Youngerman-Reynolds Hardwood Co. 325 U. S. 419, where this scheme was struck down by the Supreme Court.

week the other employee worked 10 hours of overtime for which someone had to pay. The employer had invented the scheme so that he, the employer, would not have to pay. The burden would devolve in part on the overtime worker himself. The latter worked 10 hours overtime yet he received only $8.25 more than he received in a 40-hour week.

The system is an ingenious bookkeeping device but obviously it must fail of its purpose. It is only a more elaborate method of claiming that a rate—whether a salary or a piece rate or a commission—somehow "includes" overtime even though it is paid regularly when no overtime is worked and without regard to the amount of overtime worked.

The examples dealt with two employees. It is the same for two as for one or for twenty. A "bonus" which is derived by subtraction of compensation, based on an assigned rate, from the total amount agreed to be paid to an employee or a group is not a bonus and cannot be treated as such.

Regardless of bookkeeping devices, the regular rate of pay of employees employed on group piece rate or commissions is determined first by ascertaining the total amount which is due to a particular employee under the contract and then dividing this sum by the number of hours he worked in the week. Extra overtime compensation, at half the rate thus determined, is due for each hour in excess of 40.

MISCELLANEOUS

§ 778.24 *Veterans' subsistence allowances.* Subsistence allowances paid under Public Law 346 (commonly known as the G. I. Bill of Rights) to a veteran employed in on-the-job training program work may not be used to offset the wages to which he is entitled under the Fair Labor Standards Act. The subsistence allowances provided by Public Law 346 for payment to veterans are not paid as compensation for services rendered to an employer nor are they intended as subsidy payments for such employer. In order to qualify as wages under either section 6 or section 7 of the Fair Labor Standards Act, sums paid to an employee must be paid by or on behalf of the employer. Since veterans' subsistence allowances are not so paid, they may not be used to make up the minimum wage or overtime pay requirements of the act nor are they included in the regular rate of pay under section 7.

§ 778.25 *Special overtime provisions under section 7 (b).* Section 7 (b) of the act provides a partial exemption from the overtime provisions under subsections (1) and (2) for employees employed pursuant to certain collective bargaining agreements [53] and in subsection (3), for a period of not more than fourteen workweeks in the aggregate in any calendar year, for employees in an industry found by the Administrator to be of a seasonal nature.[54] The exemption, in each case, is conditioned upon the payment to employees of overtime compensation at not less than one and one-half times their regular rate of pay for employment "in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in any workweek, as the case may be."

Under this provision, where an employee works both in excess of twelve hours in a day and in excess of fifty-six hours in the aggregate in a particular workweek, the employer must pay overtime compensation computed on either the daily or the weekly basis, whichever is greater, but not both. It may be helpful to illustrate this opinion by specific examples.

(a) Suppose an employee paid $1 an hour works the following schedule:

	M	T	W	T	F	S	S
Hours	14	14	14	14	10	0	0

On a daily basis the employee is entitled to 8 hours of overtime pay, or a total of $70, for the week (12 hours @ $1 plus 2 hours @ $1.50 for each of the first 4 days ($60) plus 10 hours @ $1 for the fifth day). On a weekly basis the employee is entitled to 10 hours of overtime pay, or a total of $71, for the week (56 hours @ $1 plus 10 hours @ $1.50). The employer must pay $71 to satisfy the requirements of the act.

(b) Suppose the employee paid $1 an hour works the following schedule:

	M	T	W	T	F	S	S
Hours	16	14	14	14	6	0	0

On a daily basis the employee is entitled to 10 hours of overtime pay, or a total of $69, for the week. On a weekly basis the employee is entitled to 8 hours of overtime pay, or a total of $68, for the week (56 hours @ $1 plus 8 hours @ $1.50). The employer must pay $69 to satisfy the requirements of the act.

EFFECTIVE DATE; RETROACTIVITY

§ 778.26 *Effective date.* The effective date of the amendments provided by section 7 (d), (e), (f) and (g) is January 25, 1950.

§ 778.27 *Retroactive effect.* Section 16 (e) of Public Law 393 (81st Cong., 1st Session—Chap. 736) provides:

> No employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended (in any action or proceeding commenced prior to or after the effective date of this Act), on account of the failure of said employer to pay an employee compensation for any period of overtime work performed prior to July 20, 1949, if the compensation paid prior to July 20, 1949, for such work was at least equal to the compensation which would have been payable for such work had section 7 (d) (6) and (7) and section 7 (g) of the Fair Labor Standards Act of 1938, as amended, been in effect at the time of such payment.

For the period between July 20, 1949, and January 25, 1950, the provisions of the former section 7 (e) of the act, as added by the act of July 20, 1949 (Pub. No. 177, 81st Cong., 1st Sess.), provided virtually identical protection.

Signed at Washington, D. C. this 31st day of January 1950.

WM. R. MCCOMB,
Administrator,
Wage and Hour Division.

[F. R. Doc. 50-973; Filed, Feb. 8, 1950; 8:45 a. m.]

[53] Discussed in Part 781 of this chapter.

[54] Discussed in Part 780, Subpart A of this chapter.

TITLE 32—NATIONAL DEFENSE

Chapter V—Department of the Army

Subchapter A—Aid of Civil Authorities and Public Relations

PART 512—PRISONERS

MAIL

Paragraph (a) of § 512.3 is changed to read as follows:

§ 512.3 *Mail*—(a) *Outgoing.* (1) Each sentenced prisoner confined in an Army confinement facility will be permitted to write authorized persons a minimum of one letter each week, except those in isolation or solitary confinement, who will be permitted to write at least one letter each 2 weeks. All letters will be submitted unsealed for inspection.

(2) No limitation will be placed on the number of letters which may be written by prisoners not serving sentences to confinement. All letters will be submitted unsealed for inspection.

* * * * *

[C2, AR 600-375, Jan. 16, 1950] (Sec. 2, 38 Stat. 1085, as amended; 10 U. S. C. 1453. Interprets or applies secs. 1, 2, 38 Stat. 1074, 1075, 1085, 1086; 10 U. S. C. 1455, 1457, 1457a, 1457b, 1458)

[SEAL] EDWARD F. WITSELL,
Major General, U. S. A.,
The Adjutant General.

[F. R. Doc. 50-1007; Filed, Feb. 3, 1950; 8:51 a. m.]

Chapter VII—Department of the Air Force

PART 812—PRISONERS

MAIL

CROSS REFERENCE: For amendment of regulations with respect to prisoners, see Part 512 of Chapter V, *supra*, which was made applicable to the Department of the Air Force at 13 F. R. 8751.

TITLE 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 27—LETTER, CALL, AND LOCK BOXES, AND KEY DEPOSITS

RENT OF BOXES

In § 27.7 *Rent of boxes* (13 F. R. 8881) amend paragraph (c) to read as follows:

(c) *Payment of rent by Federal Government agencies.* (1) Agencies of the Federal Government through their proper officers are permitted to pay rental on post office boxes for not more than one full fiscal year in advance, or for the remaining one, two, or three quarters of each fiscal year. When boxes have been rented under these conditions, postmasters shall give notice on Form 3908, card notice of box rent due, 15 days in advance of the expiration of the period for which rental has been paid. A notation showing the amount of rental for one year and the post office box number shall be placed in the upper right corner of Form 3908. The form

shall be postmarked before placing in the box.

(2) The Government agency concerned will prepare Standard Form 1034, or similar voucher form, which will not require certification by the postmaster, and payment will be made by check. The check will bear the post office box number, or will be accompanied by a copy of the voucher bearing such box number.

(3) Box rentals accepted in advance under these provisions shall be placed with other trust funds and shall be withdrawn therefrom and placed with other box rent receipts at the beginning of the quarter to which applicable. If a Government agency surrenders a box, any advance rental fee remaining in the trust funds shall be refunded and a receipt obtained, signed by a proper official.

(R. S. 161, 396, 3901, secs. 304, 309, 42 Stat. 24, 25; 5 U. S. C. 22, 369, 39 U. S. C. 279)

[SEAL] J. M. DONALDSON,
Postmaster General.

[F. R. Doc. 50-982; Filed, Feb. 3, 1950; 8:48 a. m.]

PART 127—INTERNATIONAL POSTAL SERVICE: POSTAGE RATES, SERVICE AVAILABLE, AND INSTRUCTIONS FOR MAILING

BURMA AND CORSICA

1. In § 127.226 *Burma* (13 F. R. 9124), amend the table of rates in paragraph (b) (1) to read as follows:

(b) *Parcel Post.* * * *

(1) *Table of rates.* (i) Surface parcels.

[Rates include transit charges and surcharges]

Pounds:	*Rate*	Pounds:	*Rate*
1	$0.45	12	$2.77
2	.59	13	2.91
3	1.01	14	3.05
4	1.15	15	3.19
5	1.29	16	3.33
6	1.43	17	3.47
7	1.57	18	3.61
8	1.92	19	3.75
9	2.06	20	3.89
10	2.20	21	4.03
11	2.34	22	4.17

2. Amend § 127.233 *Corsica* (13 F. R. 9135) by the addition of paragraph (c) to read as follows:

(c) *U. S. A. gift parcels*—(1) *Table of rates.* (i) Surface parcels.

Pounds:	*Rate*	Pounds:	*Rate*
1	$0.06	20	$1.20
2	.12	21	1.26
3	.18	22	1.32
4	.24	23	1.38
5	.30	24	1.44
6	.36	25	1.50
7	.42	26	1.56
8	.48	27	1.62
9	.54	28	1.68
10	.60	29	1.74
11	.66	30	1.80
12	.72	31	1.86
13	.78	32	1.92
14	.84	33	1.98
15	.90	34	2.04
16	.96	35	2.10
17	1.02	36	2.16
18	1.08	37	2.22
19	1.14	38	2.28
39	$2.34	42	$2.52
40	2.40	43	2.58
41	2.46	44	2.64

NOTE: The weight limit and other tabulated information following the postage rates in paragraph (b) (1) of this section, are also applicable to "U. S. A. Gift Parcels."

(2) *Observations.* (i) In addition to the conditions applicable to parcels generally, as set forth in paragraph (b) (1) of this section, the following special requirements imposed by agreement between the Economic Cooperation Administration and the French authorities must be met in order for parcels to be accepted at the reduced postage rate as "U. S. A. Gift Parcels":

(ii) Each parcel must be mailed as a gift by an individual sender to an individual addressee for the personal use of himself or his immediate family. The items which may be included in "U. S. A. Gift Parcels" are limited to nonperishable food, clothing and shoes for everyday use, clothes-making and shoe-making materials, mailable medical and health supplies, and household supplies and utensils if permitted under existing postal regulations. No parcel may contain more than 3 kilograms (6 lbs. 9 oz.) of coffee. Tobacco in any form, luxury clothing such as fur or fur-trimmed garments, silk or nylon garments or cloth, and articles of the glove trade are not permitted.

(iii) Vegetable seeds may be included provided the total domestic retail value of such vegetable seeds does not exceed $5.

(iv) When a relief parcel is presented for mailing under these regulations the words "U. S. A. Gift Parcel" shall be conspicuously endorsed by the mailer on the address side of the parcel and also on the customs declaration. The use of the words "U. S. A. Gift Parcel" will be a certification by the mailer that the provisions of the ECA regulations have been met. If the parcels prove to be undeliverable as addressed and the senders have not specified an alternative addressee or requested return in case of nondelivery by means of appropriate endorsements on the customs declarations and dispatch note, the parcel will be turned over to the French Red Cross.

(v) Also see § 127.55, paragraph (j).

(R. S. 161, 396, 398, secs. 304, 309, 42 Stat. 24, 25, 48 Stat. 943; 5 U. S. C. 22, 369, 372)

[SEAL] J. M. DONALDSON,
Postmaster General.

[F. R. Doc. 50-984; Filed, Feb. 3, 1950; 8:48 a. m]

PART 127—INTERNATIONAL POSTAL SERVICE: POSTAGE RATES, SERVICE AVAILABLE, AND INSTRUCTIONS FOR MAILING

EGYPT

In § 127.244 *Egypt* (13 F. R. 9144) amend subdivision (iii) of paragraph (a) (7) to read as follows:

(a) *Regular mails.* * * *

(7) *Prohibitions.* * * *

(iii) Coins; manufactured or unmanufactured platinum, gold or silver; precious stones, jewelry, and other precious articles. Remittances of currency other than Egyptian are not delivered but the addressees are offered the equivalent in Egyptian money at the official rate.

(R. S. 161, 396, 398, secs. 304, 309, 42 Stat. 24, 25, 48 Stat. 943; 5 U. S. C. 22, 369, 372)

[SEAL] J. M. DONALDSON,
Postmaster General.

[F. R. Doc. 50-983; Filed, Feb. 3, 1950; 8:48 a. m.]

TITLE 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

PART 95—CAR SERVICE

EDITORIAL NOTE: Section 95.1100 has been excluded from the Code of Federal Regulations, 1949 Edition.

PART 101—RAIL AND WATER CARRIER PASSES

EDITORIAL NOTE: Sections 101.101 to 101.123 have been codified as § 101.101 List of forms.

PART 120—ANNUAL, SPECIAL OR PERIODICAL REPORTS

EDITORIAL NOTE: Section 120.11b has been excluded from the Code of Federal Regulations, 1949 Edition. Order dated Nov. 22, 1948 appearing at 13 F. R. 7386 has been codified as § 120.75.

PART 121—SEPARATION OF OPERATING EXPENSES BETWEEN FREIGHT AND PASSENGER SERVICES

EDITORIAL NOTE: Sections 121.11, 121.57, 121.58, and 121.68 have been excluded from the Code of Federal Regulations, 1949 Edition.

PART 133—SIGNAL, INTERLOCKING, TRAIN-CONTROL, AND TRAIN-ORDER STATISTICS

EDITORIAL NOTE: Section 133.1 has been excluded from the Code of Federal Regulations, 1949 Edition.

PART 134—SIGNAL FAILURE REPORTS

EDITORIAL NOTE: Sections 134.1, 134.2 and 134.3 have been codified as § 134.1 List of forms.

PART 143—LONG - AND - SHORT - HAUL AND AGGREGATE-OF-INTERMEDIATES RATES

EDITORIAL NOTE: Sections 143.1 to 143.7, 143.41, 143.51 and 143.52 have been excluded from the Code of Federal Regulations, 1949 Edition.

PART 148—POSTING TARIFFS AT STATIONS

EDITORIAL NOTE: Sections 148.9, 148.11 and 148.12 have been excluded from the Code of Federal Regulations, 1949 Edition.

PART 153—REGISTER OF EQUIPMENT AND ORIGINAL COST FORMS

EDITORIAL NOTE: Sections 153.70 to 153.96 have been codified as § 153.70 List of forms prescribed.

PART 155—UNIFORM SYSTEM OF RECORDS AND REPORTS OF PROPERTY CHANGES; COMMON CARRIERS

EDITORIAL NOTE: Sections 155.300 to 155.314 have been codified as § 155.300 List of forms.

PART 156—UNIFORM SYSTEM OF RECORDS AND REPORTS OF PROPERTY CHANGES; PIPE LINE CARRIERS

EDITORIAL NOTE: Sections 156.101 to 156.103 have been codified as § 156.101 List of forms.

PART 158—SPECIFICATIONS FOR PIPE LINE CARRIERS

EDITORIAL NOTE: Sections 158.623 to 158.633 have been codified as § 158.623 List of forms.

PART 169—DISTRICTS

EDITORIAL NOTE: Part 169 has been excluded from the Code of Federal Regulations, 1949 Edition.

PART 170—COMMERCIAL ZONES

EDITORIAL NOTE: Sections 170.11, 170.12, 170.16, 170.17 and 170.40 to 170.43 have been excluded from the Code of Federal Regulations, 1949 Edittion.

PART 173—CONTRACTS FOR TRANSPORTATION OF PROPERTY

EDITORIAL NOTE: Sections 173.4 and 173.5 have been excluded from the Code of Federal Regulations, 1949 Edition.

PART 194—NECESSARY PARTS AND ACCESSORIES

EDITORIAL NOTE: Part 194 has been redesignated as set forth in the following table:

Old section No.	*New section No.*
194.1 and 194.2	No change
194.3 (introductory paragraph)	194.3
194.3 (a)	194.4
(b)	194.5
(c)	194.6
(d) (1)-(8)	194.7
(d) (9) (i)	194.8
194.4	194.9
194.5	194.10
194.5 (a)	194.11
194.5 (b)	194.12
194.5 (c) (1)	194.13
(c) (2)	194.14
(c) (2) (i)	194.15
(c) (2) (ii) (*a*)	194.16
(c) (2) (ii) (*b*) (*1*)-(3)	194.17
(c) (2) (ii) (*b*) (*4*), (*5*)	194.18
(c) (2) (ii) (*c*), (*d*), (*e*)	194.19
(c) (2) (ii) (*f*)-(*i*)	194.20
194.5 (d)	194.21
194.6	194.22

PART 195—ACCIDENT REPORTS

EDITORIAL NOTE: Sections 195.0 and 195.7 have been excluded from the Code of Federal Regulations, 1949 Edition.

PART 201—CARRIERS

EDITORIAL NOTE: Sections 201.101 to 201.112 have been codified as § 201.101 List of forms.

PART 204—CHARGES ON SMALL SHIPMENTS

EDITORIAL NOTE: Part 204 has been excluded from the Code of Federal Regulations, 1949 Edition.

PART 215—EMERGENCY OPERATING AUTHORITIES

EDITORIAL NOTE: Part 215 has been excluded from the Code of Federal Regulations, 1949 Edition.

PART 302—LIST OF FORMS

EDITORIAL NOTE: Section 302.2 has been excluded from the Code of Federal Regulations, 1949 Edition.

NOTICES

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

[Administrative Order 2470]

NORTH DAKOTA

LOAN ANNOUNCEMENT

JANUARY 10, 1950.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation: *Amount*
North Dakota 26E LaMoure---- $1,075,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 50-985; Filed, Feb. 3, 1950; 8:47 a. m.]

[Administrative Order 2471]

MAINE

LOAN ANNOUNCEMENT

JANUARY 11, 1950.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation: *Amount*
Maine 2M Penobscot---------- $210,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 50-986; Filed, Feb. 3, 1950; 8:47 a. m.]

[Administrative Order 2472]

ALABAMA

LOAN ANNOUNCEMENT

JANUARY 11, 1950.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation: *Amount*
Alabama 37F Morgan---------- $975,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 50-987; Filed, Feb. 3, 1950; 8:47 a. m.]

[Administrative Order 2473]

MINNESOTA

LOAN ANNOUNCEMENT

JANUARY 11, 1950.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation: *Amount*
Minnesota 32S Fillmore-------- $530,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 50-988; Filed, Feb. 3, 1950; 8:47 a. m.]

[Administrative Order 2474]

VIRGINIA

LOAN ANNOUNCEMENT

JANUARY 11, 1950.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation: *Amount*
Virginia 31W Mecklenburg------ $340,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 50-989; Filed, Feb. 3, 1950; 8:48 a. m.]

[Administrative Order 2475]

KANSAS

LOAN ANNOUNCEMENT

JANUARY 12, 1950.

Pursuant to the provisions of the Rural Electrification Act of 1936, as

amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation:	*Amount*
Kansas 44H, K Grant	$782,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 50-990; Filed, Feb. 3, 1950; 8:48 a. m.]

[Administrative Order 2476]

MONTANA

LOAN ANNOUNCEMENT

JANUARY 12, 1950.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation:	*Amount*
Montana 28D McCone	$125,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 50-991; Filed, Feb. 3, 1950; 8:48 a. m.]

[Administrative Order 2477]

OKLAHOMA

LOAN ANNOUNCEMENT

JANUARY 16, 1950.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation:	*Amount*
Oklahoma 10T Cleveland	$365,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 50-992; Filed, Feb. 3, 1950; 8:48 a. m.]

[Administrative Order 2478]

KENTUCKY

LOAN ANNOUNCEMENT

JANUARY 16, 1950.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation:	*Amount*
Kentucky 26P Todd	$800,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 50-993; Filed, Feb. 3, 1950; 8:48 a. m.]

[Administrative Order 2479]

ILLINOIS

LOAN ANNOUNCEMENT

JANUARY 16, 1950.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation:	*Amount*
Illinois 39R Fulton	$53,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 50-994; Filed, Feb. 3, 1950; 8:49 a. m.]

[Administrative Order 2480]

KANSAS

LOAN ANNOUNCEMENT

JANUARY 16, 1950.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation:	*Amount*
Kansas 46G Meade	$282,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 50-995; Filed, Feb. 3, 1950; 8:49 a. m.]

[Administrative Order 2481]

NEBRASKA

LOAN ANNOUNCEMENT

JANUARY 17, 1950.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation:	*Amount*
Nebraska 1G Roosevelt District Public	$120,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 50-996; Filed, Feb. 3, 1950; 8:49 a. m.]

[Administrative Order 2482]

INDIANA

LOAN ANNOUNCEMENT

JANUARY 17, 1950.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation:	*Amount*
Indiana 11H Warren	$205,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 50-997; Filed, Feb. 3, 1950; 8:49 a. m.]

[Administrative Order 2483]

MISSOURI

LOAN ANNOUNCEMENT

JANUARY 17, 1950.

Pursuant to the provisions of the Rural Electrification Act of 1936, as amended, a loan contract bearing the following designation has been signed on behalf of the Government acting through the Administrator of the Rural Electrification Administration:

Loan designation:	*Amount*
Missouri 49T, U Howell	$1,560,000

[SEAL] CLAUDE R. WICKARD,
Administrator.

[F. R. Doc. 50-998; Filed, Feb. 3, 1950; 8:49 a. m.]

INTERSTATE COMMERCE COMMISSION

[S. O. 844, Special Directive 1-A]

LOUISVILLE AND NASHVILLE RAILROAD CO.

FURNISHING CARS FOR FUEL COAL FOR GEORGIA AND FLORIDA RAILROAD

Upon further consideration of the provisions of Service Order No. 844 (14 F. R. 7765) and good cause appearing therefor:

It is ordered, That Special Directive No. 1 under Service Order No. 844 be, and it is hereby vacated effective 4:00 p. m., January 27, 1950.

A copy of this special directive shall be served on the Louisville and Nashville Railroad Company through the Car Service Division of the Association of American Railroads and notice of this directive shall be given the public by depositing a copy in the office of the Secretary of the Commission, Washington, D. C., and by filing it with the Director of the Division of the Federal Register.

Issued at Washington, D. C., this 27th day of January A. D. 1950.

INTERSTATE COMMERCE COMMISSION,
HOMER C. KING,
Director,
Bureau of Service.

[F. R. Doc. 50-1003; Filed, Feb. 3, 1950; 8:51 a. m.]

[S. O. 844, Special Directive 2-A]

TENNESSEE RAILROAD CO.

FURNISHING CARS FOR FUEL COAL FOR GEORGIA AND FLORIDA RAILROAD

Upon further consideration of the provisions of Service Order No. 844 (14 F. R.

7765) and good cause appearing therefor:

It is ordered, That Special Directive No. 2 under Service Order No. 844 be, and it is hereby vacated effective 4:00 p. m., January 27, 1950.

A copy of this special directive shall be served on the Tennessee Railroad Company through the Car Service Division of the Association of American Railroads and notice of this directive shall be given the public by depositing a copy in the office of the Secretary of the Commission, Washington, D. C., and by filing it with the Director of the Division of the Federal Register.

Issued at Washington, D. C., this 27th day of January A. D. 1950.

INTERSTATE COMMERCE COMMISSION,
HOMER C. KING,
Director,
Bureau of Service.

[F. R. Doc. 50-1004; Filed, Feb. 3, 1950; 8:51 a. m.]

[S. O. 844, Amdt. 1, Special Directive 15]

WHEELING AND LAKE ERIE RAILWAY CO.

FURNISHING CARS FOR FUEL COAL FOR PENNSYLVANIA RAILROAD CO.

Upon further consideration of the provisions of Special Directive No. 15 (15 F. R. 493) under Service Order No. 844 (14 F. R. 7765) and good cause appearing therefor:

It is ordered, That Special Directive No. 15 under Service Order No. 844 be, and it is hereby amended by substituting paragraph 1 hereof for paragraph 1 thereof:

(1) To furnish weekly to the mines listed below sufficient cars suitable for the loading and transportation of "Run-of-Mine" locomotive fuel coal for the Pennsylvania Railroad Company, in the amounts shown:

Mine:	*Amount (tons)*
Duncanwood	390
Georgetown	540

A copy of this amendment shall be served on the Wheeling and Lake Erie Railway Company through the Car Service Division of the Association of American Railroads and notice of this amendment shall be given the public by depositing a copy in the office of the Secretary of the Commission, Washington, D. C., and by filing it with the Director of the Division of the Federal Register.

Issued at Washington, D. C., this 30th day of January A. D. 1950.

INTERSTATE COMMERCE COMMISSION,
HOMER C. KING,
Director,
Bureau of Service.

[F. R. Doc. 50-1005; Filed, Feb. 3, 1950; 8:51 a. m.]

[S. O. 844, Special Directive 21]

WHEELING AND LAKE ERIE RAILWAY CO. AND PENNSYLVANIA RAILROAD CO.

FURNISHING CARS FOR FUEL COAL FOR PENNSYLVANIA RAILROAD CO.

On January 24, 1950, the Pennsylvania Railroad Company certified that it had on that date less than nine (9) days' supply of fuel coal for locomotives (including fuel coal stock piled or loaded on cars on its line) and that not having available on its line a dependable source of supply of locomotive fuel coal, deems it necessary to increase its supply from the mine sources and in the average weekly amount herein specified:

Therefore, pursuant to the authority vested in me in paragraph (b) of Service Order No. 844, the Wheeling and Lake Erie Railway Company and the Pennsylvania Railroad Company are directed:

(1) To furnish weekly to the mines listed below sufficient cars suitable for the loading and transportation of "Run-of-Mine" locomotive fuel coal for the Pennsylvania Railroad Company, in the amounts shown:

Mine:	*Amount (tons)*
Dorothy	1,740
Dun Glen No. 11	2,880

No cars may be supplied these mines for loading of other than railroad locomotive fuel coal in the grade called for by railroad purchase orders unless and until the above-named tonnage of locomotive fuel coal certified as necessary by the Pennsylvania Railroad Company is supplied.

A copy of this special directive shall be served on the Wheeling and Lake Erie Railway Company and the Pennsylvania Railroad Company through the Car Service Division of the Association of American Railroads and notice of this directive shall be given the public by depositing a copy in the office of the Secretary of the Commission, Washington, D. C., and by filing it with the Director of the Division of the Federal Register.

Issued at Washington, D. C., this 30th day of January A. D. 1950.

INTERSTATE COMMERCE COMMISSION,
HOMER C. KING,
Director,
Bureau of Service.

[F. R. Doc. 50-1006; Filed, Feb. 3, 1950; 8:51 a. m.]

[4th Sec. Application 24835]

RUBBER FROM BATON ROUGE, LA., TO DUBUQUE, IOWA

APPLICATION FOR RELIEF

FEBRUARY 1, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. E. Boyle, Jr., Agent, for and on behalf of carriers parties to Agent W. P. Emerson, Jr.'s tariff I. C. C. No. 378.

Commodities involved: Rubber, artificial, synthetic or neoprene, crude, carloads.

From: Baton Rouge and North Baton Rouge, La.

To: Dubuque, Iowa.

Grounds for relief: Competition with rail carriers and circuitous routes.

Schedules filed containing proposed rates: W. P. Emerson, Jr.'s tariff I. C. C. No. 378, Supplement 74.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL,
Secretary.

[F. R. Doc. 50-999; Filed, Feb. 3, 1950; 8:50 a. m.]

[4th Sec. Application 24836]

LUMBER FROM THE SOUTHWEST TO VIRGINIA CITIES

APPLICATION FOR RELIEF

FEBRUARY 1, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: D. Q. Marsh, Agent, for and on behalf of carriers parties to his tariff I. C. C. No. 3791.

Commodities involved: Lumber and related articles, carloads.

From: Brownsville, El Paso and Presidio, Tex.

To: Virginia Cities and points taking same rates.

Grounds for relief: Circuitous routes.

Schedules filed containing proposed rates: D. Q. Marsh's tariff I. C. C. No. 3791, Supplement 26.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the

application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 50-1000; Filed, Feb. 3, 1950; 8:50 a. m.]

[4th Sec. Application 24837]

METHANOL FROM MILITARY, KANS., TO ILLINOIS

APPLICATION FOR RELIEF

FEBRUARY 1, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: L. E. Kipp, Agent, for and on behalf of the Gulf, Mobile and Ohio Railroad Company and other carriers named in the application.

Commodities involved: Methanol and antifreeze preparations, carloads.

From: Military, Kans.

To: Points in Illinois.

Grounds for relief: Circuitous routes.

Schedules filed containing proposed rates: L. E. Kipp's tariff I. C. C. No. A-3614, Supplement 83.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 50-1001; Filed, Feb. 3, 1950; 8:50 a. m.]

[4th Sec. Application 24838]

PAPER ARTICLES TO NEW MEXICO

APPLICATION FOR RELIEF

FEBRUARY 1, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: D. Q. Marsh, Agent, for and on behalf of carriers parties to his tariff I. C. C. No. 3845.

Commodities involved: Paper and paper articles, carloads.

From: Points in official, Southern, Western Trunk Line and Southwestern territories.

To: Points in New Mexico.

Grounds for relief: Competition with rail carriers and circuitous routes.

Schedules filed containing proposed rates; D. Q. Marsh's tariff I. C. C. No. 3845, Supplement 19.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 50-1002; Filed, Feb. 3, 1950; 8:50 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616; E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11981.

[Vesting Order 500A-260]

COPYRIGHTS OF S. FISCHER VERLAG A. G., GERMAN NATIONAL

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That the persons (including individuals, partnerships, associations, corporations or other business organizations) referred to or named in Column 5 of Exhibit A attached hereto and made a part hereof and whose last known addresses are listed in said Exhibit A as being in a foreign country (the names of which persons are listed (a) in Column 3 of said Exhibit A as the authors of the works, the titles of which are listed in Column 2, and the copyright numbers, if any, of which are listed in Column 1, respectively, of said Exhibit A, and/or (b) in Column 4 of said Exhibit A as the owners of the copyrights, the numbers, if any, of which are listed in Column 1, and covering works the titles of which are listed in Column 2, respectively, of said Exhibit A, and/or (c) in Column 5 of said Exhibit A as others owning or claiming interests in such copyrights) are residents of, or are organized under the laws of, or have their principal places of business in, such foreign country and are nationals thereof;

2. That all right, title, interest and claim of whatsoever kind or nature, under the statutory and common law of the United States and of the several States thereof, of the persons referred to in Column 5 of said Exhibit A, and also of all other persons (including individuals, partnerships, associations, corporations or other business organizations), whether or not named elsewhere in this order including said Exhibit A, who are residents of, or which are organized under the laws of or have their principal places of business in, Germany or Japan, and are nationals of such foreign countries, in, to and under the following:

a. The copyrights, if any, described in said Exhibit A,

b. Every copyright, claim of copyright and right to copyright in the works described in said Exhibit A and in every issue, edition, publication, republication, translation, arrangement, dramatization and revision thereof, in whole or in part, of whatsoever kind or nature, and of all other works designated by the titles therein set forth, whether or not filed with the Register of Copyrights or otherwise asserted, and whether or not specifically designated by copyright number,

c. Every license, agreement, privilege, power and right of whatsoever nature arising under or with respect to the foregoing,

d. All monies and amounts, and all rights to receive monies and amounts, by way of royalty, share of profits or other emolument, accrued or to accrue, whether arising pursuant to law, contract or otherwise, with respect to the foregoing,

e. All rights of renewal, reversion or revesting, if any, in the foregoing, and

f. All causes of action accrued or to accrue at law or in equity with respect to the foregoing, including but not limited to the rights to sue for and recover all damages and profits and to request and receive the benefits of all remedies provided by common law or statute for the infringement of any copyright or the violation of any right or the breach of any obligation described in or affecting the foregoing,

is property of, and is property payable or held with respect to copyrights or rights related thereto in which interests are held by, and such property itself constitutes interests held therein by, the aforesaid nationals of foreign countries.

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described in subparagraph 2 hereof, to be held, used, administered, liquidated,

sold or otherwise dealt with in the interest of and for the benefit of the United States.

The term "national" as used herein shall have the meaning prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on January 16, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

EXHIBIT A

Column 1 Copyright Nos.	Column 2 Titles of works	Column 3 Names and last known nationalities of authors	Column 4 Names and last known addresses of owners of copyrights	Column 5 Identified persons whose interests are being vested
D15791	Vor Sonnenuntergang: Schauspiel (in 5 akten). 1932.	Gerhart Hauptmann (nationality not established).	S. Fischer Verlag, A. G., Berlin, Germany (nationality, German).	Owner.

[F. R. Doc. 50-1012; Filed, Feb. 3, 1950; 8:52 a. m.]

[Vesting Order 500A-261]

COPYRIGHTS OF DR. BENNO FILSER VERLAG, G. M. B. H., GERMAN NATIONAL

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That the persons (including individuals, partnerships, associations, corporations or other business organizations) referred to or named in Column 5 of Exhibit A attached hereto and made a part hereof and whose last known addresses are listed in said Exhibit A as being in a foreign country (the names of which persons are listed (a) in Column 3 of said Exhibit A as the authors of the works, the titles of which are listed in Column 2, and the copyright numbers, if any, of which are listed in Column 1, respectively, of said Exhibit A, and/or (b) in Column 4 of said Exhibit A as the owners of the copyrights, the numbers, if any, of which are listed in Column 1, and covering works the titles of which are listed in Column 2, respectively, of said Exhibit A, and/or (c) in Column 5 of said Exhibit A as others owning or claiming interests in such copyrights) are residents of, or are organized under the laws of, or have their principal places of business in, such foreign country and are nationals thereof;

2. That all right, title, interest and claim of whatsoever kind or nature, under the statutory and common law of the United States and of the several States thereof, of the presons referred to in Column 5 of said Exhibit A, and also of all other persons (including individuals, partnerships, associations, corporations or other business organizations), whether or not named elsewhere in this Order including said Exhibit A, who are residents of, or which are organized under the laws of or have their principal places of business in, Germany or Japan, and are nationals of such foreign countries, in, to and under the following:

a. The copyrights, if any, described in said Exhibit A,

b. Every copyright, claim of copyright and right to copyright in the works described in said Exhibit A and in every issue, edition, publication, republication, translation, arrangement, dramatization and revision thereof, in whole or in part, of whatsoever kind or nature, and of all other works designated by the titles therein set forth, whether or not filed with the Register of Copyrights or otherwise asserted, and whether or not specifically designated by copyright number,

c. Every license, agreement, privilege, power and right of whatsoever nature arising under or with respect to the foregoing,

d. All monies and amounts, and all rights to receive monies and amounts, by way of royalty, share of profits or other emolument, accrued or to accrue, whether arising pursuant to law, contract or otherwise, with respect to the foregoing,

e. All rights of renewal, reversion or revesting, if any, in the foregoing, and

f. All causes of action accrued or to accrue at law or in equity with respect to the foregoing, including but not limited to the rights to sue for and recover all damages and profits and to request and receive the benefits of all remedies provided by common law or statute for the infringement of any copyright or the violation of any right or the breach of any obligation described in or affecting the foregoing,

is property of, and is property payable or held with respect to copyrights or rights related thereto in which interests are held by, and such property itself constitutes interests held therein by, the aforesaid nationals of foreign countries.

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described in subparagraph 2 hereof, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The term "national" as used herein shall have the meaning prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on January 16, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

EXHIBIT A

Column 1 Copyright Nos.	Column 2 Titles of works	Column 3 Names and last known nationalities of authors	Column 4 Names and last known addresses of owners of copyrights	Column 5 Identified persons whose interests are being vested
Unknown	Beethoven's Kompositions-pläne dargestellt in den Sonaten für Klavier und Violine. 1931.	Walter Engelsmann nationality not established.	Dr. Benno Filser Verlag G. m. b. H., Ausburg, Germany (nationality, German).	Owner.

[F. R. Doc. 50-1013; Filed, Feb. 3, 1950; 8:52 a. m.]

PIERRE DE VITRY D' AVAUCOURT

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Pierre de Vitry d'Avaucourt; Bainbridge, Pa.; 40843; property described in Vesting Order No. 666 (8 F. R. 5047, Apr. 17, 1943), relating to United States Letters Patent No. 2,003,994.

Executed at Washington, D. C., on January 30, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

[F. R. Doc. 50-1014; Filed, Feb. 3, 1950; 8:52 a. m.]