

**§ 547.2**

amount saved or invested by the participating employees during that year: *Provided, however,* That a plan permitting a greater contribution may be submitted to the Administrator and approved by him as a “bona fide thrift or savings plan” within the meaning of section 7(e)(3)(b) of the Act if:

(1) The plan meets all the other standards of this section;

(2) The plan contains none of the disqualifying factors enumerated in § 547.2;

(3) The employer’s contribution is based to a substantial degree upon retention of savings; and

(4) The amount of the employer’s contribution bears a reasonable relationship to the amount of savings retained and the period of retention.

(f) The employer’s contributions shall be apportioned among the individual employees in accordance with a definite formula or method of calculation specified in the plan, which formula or method of calculation is based on the amount saved or the length of time the individual employee retains his savings or investment in the plan: *Provided,* That no employee’s share determined in accordance with the plan may be diminished because of any other remuneration received by him.

(Approved by the Office of Management and Budget under control number 1215-0019)

[19 FR 4864, Aug. 3, 1954, as amended at 47 FR 145, Jan. 5, 1982]

**§ 547.2 Disqualifying provisions.**

(a) No employee’s participation in the plan shall be on other than a voluntary basis.

(b) No employee’s wages or salary shall be dependent upon or influenced by the existence of such thrift or savings plan or the employer’s contributions thereto.

(c) The amounts any employee may save under the plan, or the amounts paid by the employer under the plan may not be based upon the employee’s hours of work, production or efficiency.

**§ 547.3 Petition for amendment of regulations in this part.**

Any person wishing a revision of any of the terms of the regulations in this part may submit in writing to the Administrator a petition setting forth the

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changes desired and the reasons for proposing them. If upon the inspection of the petition, the Administrator believes that reasonable cause for amendment of the regulations in this part is set forth, the Administrator will either schedule a hearing with due notice to interested parties, or will make other provision for affording interested parties an opportunity to present their views, either in support of or in opposition to the proposed changes.

**PART 548—AUTHORIZATION OF ESTABLISHED BASIC RATES FOR COMPUTING OVERTIME PAY**

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## Wage and Hour Division, Labor

## § 548.3

AUTHORITY: Sec. 7, 52 Stat. 1063, as amended; 29 U.S.C. 207, unless otherwise noted.

### Subpart A—General Regulations

SOURCE: 20 FR 5679, Aug. 6, 1955, unless otherwise noted.

#### § 548.1 Scope and effect of regulations.

The regulations in this part set forth the requirements for authorization of established basic rates to be used in the computation of overtime pay in accordance with section 7(g)(3) of the Fair Labor Standards Act of 1938, as amended. Payment of overtime compensation in accordance with other subsections of section 7 of the Act is explained in part 778 of this title (Interpretative Bulletin on Overtime Compensation).

#### § 548.2 General conditions.

The requirements of section 7 of the Act with respect to the payment of overtime compensation to an employee for a workweek longer than the applicable number of hours established in section 7(a) of the Act, will be met under the provisions of section 7(g)(3) of the Act by payments which satisfy all the following standards:

(a) Overtime compensation computed in accordance with this part and section 7(g)(3) of the Act is paid pursuant to an agreement or understanding arrived at between the employer and the employee or as a result of collective bargaining before performance of the work;

(b) A rate is established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder;

(c) The established basic rate is a specified rate or a rate which can be derived from the application of a specified method of calculation;

(d) The established basic rate is a bona fide rate and is not less than the minimum hourly rate required by applicable law;

(e) The basic rate so established is authorized by § 548.3 or is authorized by the Administrator under § 548.4 as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the par-

ticular work over a representative period of time;

(f) Overtime hours are compensated at a rate of not less than one and one-half times such established basic rate;

(g) The hours for which the employee is paid not less than one and one-half times such established basic rate qualify as overtime hours under section 7(e) (5), (6), or (7) of the Act;

(h) The number of hours for which the employee is paid not less than one and one-half times such established basic rate equals or exceeds the number of hours worked by him in any workweek in excess of the maximum workweek applicable to such employees under subsection 7(a) of the Act;

(i) The employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of section 7(e) of the Act are not less than the minimum hourly rate required by this Act or other applicable law;

(j) Extra overtime compensation is properly computed and paid on other forms of additional pay which have not been considered in arriving at the basic rate but which are required to be included in computing the regular rate.

[20 FR 5679, Aug. 6, 1955, as amended at 26 FR 7731, Aug. 18, 1961]

#### § 548.3 Authorized basic rates.

A rate which meets all of the conditions of § 548.2 and which in addition satisfies all the conditions set forth in one of the following paragraphs will be regarded 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 may be used in computing overtime compensation for purposes of section 7(g)(3) of the Act, and § 548.2:

(a) A rate per hour which is obtained by dividing a monthly or semi-monthly salary by the number of regular working days in each monthly or semi-monthly period and then by the number or hours in the normal or regular workday. Such a rate may be used to compute overtime compensation for all the overtime hours worked by the employee during the monthly or semi-monthly period for which the salary is paid.