

of the regulations in this part and the contributions made by the employer for providing the benefits described in section 7(e)(4) of the Act may be excluded from the regular rate if they meet the tests set forth in the Interpretative Bulletin, part 778, of this chapter, §§ 778.214 and 778.215.

§ 549.1 Essential requirements for qualifications.

(a) A bona fide profit-sharing plan or trust for purposes of section 7(e)(3)(b) of the Act is required to meet all of the standards set forth in paragraphs (b) through (g) of this section and must not contain any of the disqualifying provisions set forth in § 549.2.

(b) The profit-sharing plan or trust constitutes a definite program or arrangement in writing, communicated or made available to the employees, which is established and maintained in good faith for the purpose of distributing to the employees a share of profits as additional remuneration over and above the wages or salaries paid to employees which wages or salaries are not dependent upon or influenced by the existence of such profit-sharing plan or trust or the amount of the payments made pursuant thereto.

(c) All contributions or allocations by the employer to the fund or trust to be distributed to the employees are:

(1) Derived solely from profits of the employer's business enterprise, establishment or plant as a whole, or an established branch or division of the business or enterprise which is recognized as such for general business purposes and for which profits are separately and regularly calculated in accordance with accepted accounting practice; and

(2) Made periodically, but not more frequently than is customary or consonant with accepted accounting practice to make periodic determinations of profit.

(d) Eligibility to share in profits extends:

(1) At least to all employees who are subject to the minimum wage and overtime provisions of the Act, or to all such employees in an established part of the employer's business as described in paragraph (c) of this section: *Provided, however,* That such eligibility

may be determined by factors such as length of service or minimum schedule of hours or days of work which are specified in the plan or trust, and further, that eligibility need not extend to officers of the employer; or

(2) To such classifications of employees as the employer may designate with the approval of the Administrator upon a finding, after notice to interested persons, including employee representatives, and an opportunity to present their views either orally or in writing, that it is in accord with the meaning and intent of the provisions of section 7(e)(3)(b) of the Act and this part. The Administrator may give such notice by requiring the employer to post a notice approved by the Administrator for a specified period in a place or places where notices to employees are customarily posted or at such other place or places designated by the Administrator, or he may require notice to be given in such other manner as he deems appropriate.

(e) The amounts paid to individual employees are determined in accordance with a definite formula or method of calculation specified in the plan or trust. The formula or method of calculation may be based on any one or more or more of such factors as straight-time earnings, total earnings, base rate of pay of the employee, straight-time hours or total hours worked by employees, or length of service, or distribution may be made on a per capita basis.

(f) An employee's total share determined in accordance with paragraph (e) of this section may not be diminished because of any other remuneration received by him.

(g) Provision is made either for payment to the individual employees of their respective shares of profits within a reasonable period after the determination of the amount of profits to be distributed, or for the irrevocable deposit by the employer of his employees' distributive shares of profits with a trustee for deferred distribution to such employees of their respective shares after a stated period of time or upon the occurrence of appropriate contingencies specified in the plan or trust: *Provided, however,* That the right of an employee to receive his share is

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not made dependent upon his continuing in the employ of the employer after the period for which the determination of profits has been made.

(Approved by the Office of Management and Budget under control number 1215-0122)

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§ 549.2 Disqualifying provisions.

No plan or trust which contains any one of the following provisions shall be deemed to meet the requirements of a bona fide profit-sharing plan or trust under section 7(e)(3)(b) of the Act:

(a) If the share of any individual employee is determined in substance on the basis of attendance, quality or quantity of work, rate of production, or efficiency;

(b) If the amount to be paid periodically by the employer into the fund or trust to be distributed to the employees is a fixed sum;

(c) If periodic payments of minimum amounts to the employees are guaranteed by the employer;

(d) If any individual employee's share, by the terms of the plan or trust, is set at a predetermined fixed sum or is so limited as to provide in effect for the payment of a fixed sum, or is limited to or set at a predetermined specified rate per hour or other unit of work or worktime;

(e) If the employer's contributions or allocations to the fund or trust to be distributed to the employees are based on factors other than profits such as hours of work, production, efficiency, sales or savings in cost.

§ 549.3 Distinction between plan and trust.

As used in this part:

(a) *Profit-sharing plan* means any such program or arrangement as qualifies hereunder which provides for the distribution by the employer to his employees of their respective shares of profits;

(b) *Profit-sharing trust* means any such program or arrangement as qualifies under this part which provides for the irrevocable deposit by the employer of his employees' distributive shares of profits with a trustee for deferred distribution to such employees of their respective shares.

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§ 549.4 Petition for amendment of regulations.

Any person wishing a revision of any of the terms of the foregoing regulations in this part may submit in writing to the Administrator a petition setting forth the changes desired and the reasons for proposing them. If, upon 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 in support of or in opposition to the proposed changes.

PART 550—DEFINING AND DELIMITING THE TERM "TALENT FEES"

Sec.

550.1 "Talent fees" as used in section 7(e)(3)(c) of the Fair Labor Standards Act, as amended.

550.2 Definitions.

550.3 Petition for amendment of regulations.

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

§ 550.1 "Talent fees" as used in section 7(e)(3)(c) of the Fair Labor Standards Act, as amended.

The term *talent fees* in section 7(e)(3)(c) of the Act shall mean extra payments made to performers, including announcers on radio and television programs, where the payment is made:

(a) To an employee having regular duties as a staff performer (including announcers), as an extra payment for services as a performer on a particular commercial program or a particular series of commercial programs (including commercial spot announcements) or for special services as a performer on a particular sustaining program or a particular series of sustaining programs;

(b) In pursuance of an applicable employment agreement or understanding or an applicable collective bargaining agreement in a specific amount agreed upon in advance of the performance of the services or special services for which the extra payment is made: *Provided, however*, That where services described in paragraph (a) of this section