

Wage and Hour Division, Labor

§ 551.1

are performed on a program falling outside of the regular workday or workweek as established and scheduled in good faith in accordance with the provisions of the applicable employment agreement, the Administrator will not regard the Act as requiring additional compensation as a result of the time worked on the program if the parties agree in advance of such program that a special payment made therefor shall include any increased statutory compensation attributable to the additional worktime thereon and if such special payment, when made, is actually sufficient in amount to include the statutory straight time and overtime compensation (computed without regard to talent fees) for the additional time worked in the workweek resulting from the performer's services on such program.

[15 FR 402, Jan. 25, 1950, as amended at 18 FR 5069, Aug. 25, 1953]

§ 550.2 Definitions.

As used in the regulations in this part:

(a) The term *extra payment* shall mean a payment, in a specific amount, made in addition to the straight-time and overtime compensation which would be due the performer under the agreement applicable to his employment and under the Act if the time spent in performing the services or special services referred to in paragraph (a) of § 550.1 had been devoted exclusively to duties as a staff performer; but shall not include any payment any part of which is credited or offset against any remuneration otherwise payable to the performer under any contract or statutory provision;

(b) The term *performer* shall mean a person who performs a distinctive, personalized service as a part of an actual broadcast or telecast including an actor, singer, dancer, musician, comedian, or any person who entertains, affords amusement to, or occupies the interest of a radio or television audience by acting, singing, dancing, reading, narrating, performing feats of skill, or announcing, or describing or relating facts, events and other matters of interest, and who actively participates in such capacity in the actual presentation of a radio or television program.

It shall not include such persons as script writers, stand-ins, or directors who are neither seen nor heard by the radio or television audience; nor shall it include persons who participate in the broadcast or telecast purely as technicians such as engineers, electricians and stage hands;

(c) The term *special services* shall mean services beyond the scope of a performer's regular or ordinary duties as a staff performer under the agreement applicable to the employment.

[15 FR 402, Jan. 25, 1950]

§ 550.3 Petition for amendment of regulations.

Any person wishing a revision of any of the terms of the foregoing regulations 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 is set forth, the Administrator will either schedule a hearing with due notice to interested parties, or will make other provisions for affording interested parties an opportunity to present their views, either in support of or in opposition to the proposed change.

[15 FR 402, Jan. 25, 1950]

PART 551—LOCAL DELIVERY DRIVERS AND HELPERS; WAGE PAYMENT PLANS

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AUTHORITY: Sec. 9, 75 Stat. 74; 29 U.S.C. 213(b).

SOURCE: 30 FR 8585, July 7, 1965, unless otherwise noted.

§ 551.1 Statutory provision.

The following provision for exemption from the overtime pay provision is contained in section 13(b) of the Fair

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Labor Standards Act of 1938, as amended (29 U.S.C. 213(b)):

(b) The provisions of section 7 shall not apply with respect to:

* * * * *

(11) any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 7(a).

Under this provision, an employee employed and compensated as described in the quoted paragraph (11) may be employed without payment of overtime compensation for a workweek longer than the maximum workweek applicable to him under section 7(a) of the Act, but only if it is established by a finding of the Secretary that the employee is compensated for his employment as a driver or driver's helper making local deliveries on the basis of trip rates or other delivery payment plan that has the general purpose and effect stated in section 13(b)(11). Such a finding is prescribed by the statute as one of the "explicit prerequisites to exemption". (See *Arnold v. Kanowsky*, 361 U.S. 388, 392.)

§551.2 Findings authorized by this part.

(a) The Administrator, pursuant to the authority vested in him by the Secretary of Labor, will make and apply findings under section 13(b)(11) of the Act as provided in this part. Such findings shall be made only upon petitions meeting the requirements of this part, and only as authorized in this section.

(b) For the purpose of establishing whether a wage payment plan has the purpose and effect required by section 13(b)(11) for an exemption from the overtime provisions of the Act, the Administrator shall have authority, upon a proper showing and in accordance with the provisions of this part, to make a finding as to the general purpose and effect of any specific plan of compensation on the basis of trip rates or other delivery payment plan, with respect to the reduction of the length of the workweeks worked by the em-

ployees of any specific employer who are compensated in accordance with such plan for their employment by such employer as drivers or drivers' helpers making local deliveries.

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

§551.3 Petition for a finding.

Any employer desiring to establish an exemption from the overtime pay requirements of the Act with respect to employees whose employment and compensation may be considered to qualify therefor under section 13(b)(11) may petition the Administrator, in writing, for a finding under such section and this part. If the wage payment plan with respect to which the finding