

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 at a rate not less than one and one-half times the hourly nonovertime rate established for the type of work he is performing during such overtime hours. No additional overtime pay will be due under the act provided that the general requirements set forth in § 778.417 are met and;

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

(2) The overtime hours for which the overtime rate is paid qualify as overtime hours under section 7(e) (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 the applicable maximum hours standard.

(b) 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 applicable minimum rate therefor and if it is the rate actually paid for such work when performed during non-overtime hours.

§ 778.420 Combined hourly rates and piece rates.

Where an employee works at a combination of hourly and piece rates, the payment of a rate not less than one and one-half times 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 § 778.418) and those concerning hourly rates (as discussed in § 778.419) are respectively met.

§ 778.421 Offset hour for hour.

Where overtime rates are paid pursuant to statute or contract for hours in excess of 8 in a day, or in excess of the applicable maximum hours standard, or in excess of the employees' normal working hours or regular working hours (as under section 7(e)(5) or for work on "special days" (as under section 7(e)(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 the applicable maximum hours standard) (under section 7(e) (7), the requirements of section 7(g) (1) and 7(g)(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 the applicable maximum hours standard for the particular 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 applicable maximum in any workweek.

Subpart F—Pay Plans Which Circumvent the Act

DEVICES TO EVADE THE OVERTIME REQUIREMENTS

§ 778.500 Artificial regular rates.

(a) 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.

(b) 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 §§ 778.321 through 778.329. It might be well, however, to re-emphasize that the hourly rate paid for the identical work during the hours in excess of the applicable maximum hours standard cannot be