

§ 549.2

29 CFR Ch. V (7-1-02 Edition)

§ 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.

§ 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 in-

spection 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 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

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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 work-week 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

Sec.	
551.1	Statutory provision.
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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 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