wages and fringe benefits to be re-
ceived by employees of contractors and
subcontractors employed in work on
such contracts, contains the following
provision:

Sec. 6. In determining any overtime pay to
which such service employees are entitled
under any Federal law, the regular or basic
hourly rate of pay of such an employee shall
not include any fringe benefit payments
computed hereunder which are excluded
from the regular rate under the Fair Labor
Standards Act by provisions of section 7(e)*
thereof. (*Subsection designation changed in
text from section 7(d) to 7(e) to conform with
the relettering enacted by the Fair Labor
Standards Amendments of 1966.)

Where the fringe benefits specified in
such a service contract are furnished to
an employee, the above provision per-
mits exclusion of such fringe benefits
from the employee’s regular rate of pay
under the Fair Labor Standards Act
pursuant to the rules and principles set
forth in subpart C of this part 778. How-
ever, the McNamara-O’Hara Act per-
mits an employer to discharge his obli-
gation to provide the specified fringe
benefits by furnishing any equivalent
combinations of bona fide fringe bene-
fits or by making equivalent or dif-
ferential payments in cash. Permis-
sible methods of doing this are set
forth in part 4 of this title, subpart B.
If the employer furnishes equivalent
benefits or makes cash payments, or
both, to an employee as therein au-
thorized, the amounts thereof, to the
extent that they operate to discharge
the employer’s obligation under the
McNamara-O’Hara Act to furnish such
specified fringe benefits, may be ex-
cluded pursuant to such Act from the
employee’s regular or basic rate of pay
in computing any overtime pay due the
employee under the Fair Labor Stan-
dards Act, pursuant to the rule provided
in §4.55 of this title. This means that
such equivalent fringe benefits or cash
payments which are authorized under
the McNamara-O’Hara Act to be pro-
vided in lieu of the fringe benefits spec-
ified in determinations issued under
such Act are excludable from the reg-
ular rate in applying the overtime pro-
visions of the Fair Labor Standards
Act if the fringe benefits specified
under the McNamara-O’Hara Act would
be so excludable if actually furnished.
This is true regardless of whether the
equivalent benefits or payments them-
selves meet the requirements of sec-
tion 7(e) of the Fair Labor Standards
Act and subpart C of this part 778.

Subpart B—The Overtime Pay
Requirements

§ 778.100 The maximum-hours provi-
sions.

Section 7(a) of the Act deals with
maximum hours and overtime com-
ensation for employees who are with-
in the general coverage of the Act and
are not specifically exempt from its
overtime pay requirements. It pre-
scribes the maximum weekly hours of
work permitted for the employment of
such employees in any workweek with-
out extra compensation for overtime,
and a general overtime rate of pay not
less than one and one-half times the
employee’s regular rate which the em-
ployee must receive for all hours
worked in any workweek in excess of
the applicable maximum hours. The
employment by an employer of an em-
ployee in any work subject to the Act
in any workweek brings these provi-
sions into operation. The employer is
prohibited from employing the em-
ployee in excess of the prescribed max-
imum hours in such workweek without
paying him the required extra compen-
sation for the overtime hours
worked at a rate meeting the statutory
requirement.

§ 778.101 Maximum nonovertime
hours.

As a general standard, section 7(a) of
the Act provides 40 hours as the max-
imum number that an employee sub-
ject to its provisions may work for an
employer in any workweek without re-
ceiving additional compensation at not
less than the statutory rate for over-
time. Hours worked in excess of the
statutory maximum in any workweek
are overtime hours under the statute; a
workweek no longer than the pres-
scribed maximum is a nonovertime
workweek under the Act, to which the
§ 778.102 Application of overtime provisions generally.

Since there is no absolute limitation in the Act (apart from the child labor provisions and regulations thereunder) on the number of hours that an employee may work in any workweek, he may work as many hours a week as he and his employer see fit, so long as the required overtime compensation is paid him for hours worked in excess of the maximum workweek prescribed by section 7(a). The Act does not generally require, however, that an employee be paid overtime compensation for hours in excess of eight per day, or for work on Saturdays, Sundays, holidays or regular days of rest. If no more than the maximum number of hours prescribed in the Act are actually worked in the workweek, overtime compensation pursuant to section 7(a) need not be paid. Nothing in the Act, however, will relieve an employer of any obligation he may have assumed by contract or of any obligation imposed by other Federal or State law to limit overtime hours of work or to pay premium rates for work in excess of a daily standard or for work on Saturdays, Sundays, holidays, or other periods outside of or in excess of the normal or regular workweek or workday. (The effect of making such payments is discussed in §§ 778.201 through 778.207 and 778.219.)

§ 778.103 The workweek as the basis for applying section 7(a).

If in any workweek an employee is covered by the Act and is not exempt from its overtime pay requirements, the employer must total all the hours worked by the employee for him in that workweek (even though two or more unrelated job assignments may have been performed), and pay overtime compensation for each hour worked in excess of the maximum hours applicable under section 7(a) of the Act. In the case of an employee employed jointly by two or more employers (see part 791 of this chapter), all hours worked by the employee for such employers during the workweek must be totaled in determining the number of hours to be compensated in accordance with section 7(a). The principles for determining what hours are hours worked within the meaning of the Act are discussed in part 785 of this chapter.

§ 778.104 Each workweek stands alone.

The Act takes a single workweek as its standard and does not permit averaging of hours over 2 or more weeks. Thus, if an employee works 30 hours one week and 50 hours the next, he must receive overtime compensation for the overtime hours worked beyond the applicable maximum in the second week, even though the average number of hours worked in the 2 weeks is 40. This is true regardless of whether the employee works on a standard or swing-shift schedule and regardless of whether he is paid on a daily, weekly, biweekly, monthly or other basis. The rule is also applicable to pieceworkers and employees paid on a commission basis. It is therefore necessary to determine the hours worked and the compensation earned by pieceworkers and commission employees on a weekly basis.

§ 778.105 Determining the workweek.

An employee’s workweek is a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. For purposes of computing pay due under the Fair Labor Standards Act, a single workweek may be established for a plant or other establishment as a whole or different workweeks may be established for different employees or groups of employees. Once the beginning time of an employee’s workweek is established, it remains fixed regardless of the schedule of hours worked by him. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act. The proper method of computing overtime pay in a period in