

FLSA-528

July 16, 1973

This is in reply to your letters of June 19 and June 28, 1973, requesting approval of the application enclosed with your June 19th letter, under section 7(g)(3) of the Fair Labor Standards Act.

The basic rates for which authorization is sought will be used in calculating payment of wages for approximately 24 employees in the solvent and waste treatment operations at the ***. Your June 28th letter indicates that notice of the application, including explanation of the proposed basic rates, has been personally given to the affected employees.

Authorization is sought for two basic rates designated in the application as methods "A" and "B". Briefly, in method A, it is proposed that the monthly total of the employee's base salary, shift differential and cost of living allowance be divided by one-twelfth (1/12) of the regular scheduled hours per year to find the basic rate upon which overtime compensation would be paid. Method B is similar to method A except that the monthly base salary, shift differential and cost of living allowance would be divided by one-twelfth (1/12) of 2080 hours (which represents 52 weeks of 40 hours) to find the basic rate. All employees subject to either method A or B will work on an alternating schedule of three days of work followed by three days off and each workday will be 11 3/4 hours. At the conclusion of a cycle of six workweeks, an employee will have worked three 4-day workweeks and three 3-day weeks.

The application indicates that a premium equal to 50 percent of such basic rate will be paid for scheduled overtime hours. Any unscheduled overtime hours will be compensated at an hourly rate equal to 150 percent of the basic rate in effect during the previous month. You have orally advised us that the reason for this is that unscheduled overtime hours will be paid for in the month following that in which they are worked, and thus the premium will be based upon the base salary, cost of living allowance and shift differential in effect in the month in which such work was done. You indicate that this is the intention in the explanations given on pages 4 and 6 of the pamphlet explaining the basic rates.

I have determined with respect to the two basic rates for which approval is sought that such rates are substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time. During a representative period, the employee's total overtime earnings calculated at either basic rate are substantially equivalent to the amount of such earnings when computed in accordance with section 7(a) of the Act. Therefore, pursuant to section 7(g)(3) of the Act and section 548.4 of Part 548, I authorize the use of such basic rates.

Sincerely,

Ben P. Robertson
Acting Administrator
Wage and Hour Division