

29 C.F.R. § 778.414

“Approval” of contracts under section 7(f).

- (a) There is no requirement that a contract, to qualify under section 7(f), must be approved by the Secretary of Labor or the Administrator. The question of whether a contract which purports to qualify an employee for exemption under section 7(f) meets the requirements is a matter for determination by the courts. This determination will in all cases depend not merely on the wording of the contract but upon the actual practice of the parties thereunder. It will turn on the question of whether the duties of the employee in fact necessitate irregular hours, whether the rate specified in the contract is a “regular rate” — that is, whether it was designed to be actually operative in determining the employee's compensation—whether the contract was entered into in good faith, whether the guaranty of pay is in fact based on the regular and overtime rates specified in the contract. While the Administrator does have the authority to issue an advisory opinion as to whether or not a pay arrangement accords with the requirements of section 7(f) he can do so only if he has knowledge of these facts.

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