**Section 210.510 Criteria Used to Establish the Necessity of a Sub-Minimum Wage**

a) In order to determine that a wage lower than the minimum wage rate provided in Section 4 of the Act is appropriate, the following criteria will be considered:

1) the specific nature and extent of an employed individual's disability and the direct correlation between the individual's disability and his/her productivity on the job;

2) a comparison of the wages paid generally to experienced employees not disabled in the locality in which the work is being performed to an individual with a disability engaged in work of a similar character at a sub-minimum wage rate;

3) the productivity of an individual with a disability compared to the norm established for nondisabled workers through the use of a verifiable work measurement method (as outlined in the regulations promulgated under the Fair Labor Standards Act of 1938, at 29 C.F.R. 525.12 (h) (1994, no subsequent dates or editions), as amended at 54 FR 32928 or the productivity of experienced nondisabled workers employed in the locality engaged in work of a similar character; and

4) the wage rate to be paid to an individual with a disability for work of similar character performed by experienced nondisabled workers.

 The Director may as a prerequisite require the submission of additional information including medical or psychological examination report or an equivalent statement from a qualified federal or State agency.

b) The Director shall not issue a license to an employer to pay a lower, disability-based wage to an individual with a disability if the employer: eliminated essential functions that the individual could perform, lowered production standards that the individual could meet, or lowered the wages of the individual because it provided the individual with a reasonable accommodation. The Director will use the Americans with Disabilities Act of 1990, as amended (29 U.C.S. 12111 et seq.) as a guide in this area.

c) A claim or representation by an employer that the average cost of employing older workers as a group is higher than the average cost of employing younger workers as a group is not an acceptable differentiation to justify a sub-minimum wage to older workers. An older worker's production level must be measured on an individual basis against the production level required of other employees to justify a sub-minimum wage to older workers. The Director will use the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621 et seq.) as a guide in this area.