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(2) The average hourly remuneration on which the rate authorized in paragraph (f)(1) of this section is based shall be computed: (i) By totaling all remuneration for employment during the workweeks ending in the prior period (including all earnings at hourly or piece rates, bonuses, commission or other incentive payments, and other forms of remuneration paid to or on behalf of the employee) except overtime premiums and other payments excluded from the regular rate pursuant to provisions of section 7(e) of the Act, and (ii) by dividing the amount thus obtained by the number of hours worked in such prior period for which such compensation was paid.

(3) Where it is not practicable for an employer to compute the total remuneration of an employee for employment in the prior period in time to determine obligations under the Act for the current quarter year (as where computation of bonus, commission, or incentive payments cannot be made immediately at the end of the period), a one month grace period may be used. If this one month grace period is used, it will be deemed in compliance with paragraph (f)(1) of this section to use the basic rate authorized therein for the quarter commencing one month after the next preceding four-quarter or quarter-year period (whichever length period is adopted as the base period for the rate determination). Once the grace period method of computation is adopted it must be used for each successive quarter.

(52 Stat. 1060, as amended; 29 U.S.C. 201)

[20 FR 5679, Aug. 6, 1955, as amended at 28 FR 11266, Oct. 22, 1963; 31 FR 6769, May 6, 1966]

§ 548.4 Application for authorization of a "basic rate."

(a) Application may be made by any employer or group of employers, for authorization of a basic rate or rates, other than those approved under § 548.3. Application must be made jointly with any collective bargaining representative of employees covered by the application. Application must be made to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

(b) Each application shall contain the following:

(1) A statement of the agreement or understanding arrived at between the employer and employee, including the proposed effective date, the term of the agreement or understanding, and a statement of the applicable overtime provisions, and

(2) A description of the basic rate of the method or formula to be used in computing the basic rate for the type of work or position to which it will be applicable, and

(3) A statement of the kinds of jobs or employees covered by the agreement, and

(4) The facts and reasons relied upon to show that the basic rate so established is substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time. For such showing, a basic rate shall be deemed "substantially equivalent" to the average hourly earnings of the employee if, during a representative period, the employee's total overtime earnings calculated at the basic rate in accordance with the applicable overtime provisions are substantially equivalent to the amount of such earnings when computed in accordance with section 7(a) of the Act on the basis of the employee's average hourly earnings for each workweek, and

(5) Such additional information as the Administrator may require.

(c) The Administrator shall require that notice of the application be given to affected employees in such manner as he deems appropriate. The Administrator shall notify the applicants in writing of his decision as to each application.

(d) In authorizing a basic rate pursuant to this part, the Administrator shall include such conditions as are necessary to insure that the basic rate will be used only so long as it is substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time, and such other conditions as are necessary or appropriate to insure compliance with the provisions of the Act.

(e) The Administrator may at any time, upon his own motion or upon

written request of any interested party setting forth reasonable grounds therefor, and after a hearing or other opportunity to interested persons to present their views, amend or revoke any authorization granted under this part.

§ 548.5 Petition for amendment.

Any person wishing a revision of any of the terms of this part may submit in writing to the Administrator a petition setting forth the changes desired and the reasons for proposing them. If, after consideration of the petition, the Administrator believes that reasonable cause for amendment of this part is set forth, he shall either schedule a hearing, with due notice to interested parties, or shall make other provisions for affording interested parties an opportunity to present their views either in support of or in opposition to the proposed changes.

Subpart B—Interpretations

INTRODUCTION

§ 548.100 Introductory statement.

(a) This subpart contains material explaining and illustrating the terms used in subpart A of this part which were issued under section 7(g)(3) of the Fair Labor Standards Act. The purpose of section 7(g)(3) of the Act, and subpart A of this part, is to provide an exception from the requirements of computing overtime pay at the regular rate,[1] and to allow, under specific conditions, the use of an established ''basic'' rate[2] instead. Basic rates are alternatives to the regular rate of pay under section 7(a), and their use is optional. The use of basic rates is principally intended to simplify bookkeeping and computation of overtime pay.

(b) Section 7(g) of the Fair Labor Standards Act provides that an employer will comply with the overtime requirements of the Act if:

> * * * pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection [7](a):
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> * * * * *
>
> (3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: *Provided,* That the rate so established shall be authorized by regulation by the Secretary of Labor as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time; and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

[20 FR 5680, Aug. 6, 1955, as amended at 26 FR 7731, Aug. 18, 1961]

REQUIREMENTS FOR A BASIC RATE

§ 548.200 Requirements.

The following conditions must be satisfied if a ''basic'' rate is to be considered proper under section 7(g)(3) and subpart A of this part.

(a) *Agreement or understanding.* There must be an agreement or understanding establishing a basic rate or rates. This agreement must be arrived at before performance of the work to which

[1] The regular rate is the average hourly earnings of an employee for a workweek. See §§ 778.107 to 778.122 of this chapter on overtime compensation. Sections 7(g)(1) and 7(g)(2) of the Act permit overtime compensation to be computed, under specified conditions, at time and one-half the bona fide hourly or piece rate applicable to the work performed during the overtime hours. See §§ 778.415 to 778.421 of this chapter.

[2] The term ''basic'' rate as used in this part means the rate authorized under section 7(g)(3) of the Fair Labor Standards Act. Such a rate may be used to compute overtime compensation under the Walsh-Healey Public Contracts Act. (See Rulings and Interpretations No. 3. section 42(e)(1)). However, the term ''basic'' rate in this part should not be confused with the more general use of the term in the Public Contracts Act to describe all rates which may be used to compute overtime compensation or the use of the term in any other statute.