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.