(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 it is intended to apply. It may be arrived at directly with the employee or through his representative. The ''basic'' rate method of computing overtime may be used for as many of the employees in an establishment as the employer chooses, provided he has reached an agreement or understanding with these employees prior to the performance of the work.[3]

(b) *The rate.* The established basic rate may be a specified rate or a rate which can be derived from the application of a specified method of calculation. For instance, under certain conditions the Regulations permit the use of the daily average hourly earnings of the employee as a basis for computing daily overtime.[4] Thus, a method rather than a specific rate is authorized. Also, under certain conditions, the cost of a single meal a day furnished to employees may be excluded from the computation of overtime pay.[5] It is the exclusion of the cost of the meals that is authorized and each employee's rate of pay, whatever it may be—an hourly rate, a piece rate or a salary—is his basic rate.

(c) *Minimum wage.* The employee's average hourly earnings for the workweek (exclusive of overtime pay and other pay which may be excluded from the regular rate)[6] and the established basic rate used to compute overtime pay may not be less than the legal minimum.[7]

[20 FR 5680, Aug. 6, 1955, as amended at 21 FR 338, Jan. 18, 1956]

[3] The records which an employer is required to maintain and preserve for an employee compensated for overtime hours on the basis of a basic rate are described in §§ 516.5(b)(5) and 516.21 of this subchapter.

[4] See § 548.302.

[5] See § 548.304.

[6] See §§ 778.200 through 778.225 of this chapter for further discussion of what payments may be excluded.

[7] The legal minimum is the highest rate required by the Fair Labor Standards Act or other Federal, State or local law.

AUTHORIZED BASIC RATES

§ 548.300 Introductory statement.

Section 548.3 contains a description of a number of basic rates any one of which, when established by agreement or understanding, is authorized for use without prior specific approval of the Administrator. These basic rates have been found in use in industry and the Administrator has determined that they are substantially equivalent to the straight-time average hourly earnings of the employee over a representative period of time. The authorized basic rates are described below.

[20 FR 5681, Aug. 6, 1955]

§ 548.301 Salaried employees.

(a) Section 548.3(a) authorizes as an established basic rate: ''A rate per hour which is obtained by dividing a monthly or semi-monthly salary by the number of regular working days in each monthly or semi-monthly period and then by the number of hours in the normal or regular workday. Such a rate may be used to compute overtime compensation for all the overtime hours worked by the employee during the monthly or semi-monthly period for which the salary is paid.''

(b) Section 548.3(a) may be applied to salaried employees paid on a monthly or semi-monthly basis. Under section 7(a) of the Act the method of computing the regular rate of pay for an employee who is paid on a monthly or semi-monthly salary basis is to reduce the salary to its weekly equivalent by multiplying the monthly salary by 12 (the number of months) or the semi-monthly salary by 24, and dividing by 52 (the number of weeks). The weekly equivalent is then divided by the number of hours in the week which the salary is intended to compensate.[8] Section 548.3(a) is designed to provide an alternative method of computing the rate for overtime purposes in the case of an employee who is compensated on a monthly or semi-monthly salary basis, where this method is found more desirable. This method is applicable only where the salary is paid for a specified number of days per week and

[8] See § 778.113 of this chapter.

a specified number of hours per day normally or regularly worked by the employee. It permits the employer to take into account the variations in the number of regular working days in each pay period. The basic rate authorized by § 548.3(a) is obtained by dividing the monthly or semi-monthly salary by the number of regular working days in the month or half-month, and then by the number of hours of the normal or regular work day.

Example. An employee is compensated at a semi-monthly salary of $154 for a workweek of 5 days of 8 hours each, Monday through Friday. If a particular half-month begins on Tuesday and ends on the second Tuesday following, there are 11 working days in that half-month. The employee's basic rate would then be computed by dividing the $154 salary by 11 working days of 8 hours each, or 88 hours. The basic rate in this situation would therefore be $1.75 an hour. The basic rate would remain the same regardless of the fact that the employee did not actually work 11 days of 8 hours each because of the occurrence of a holiday, or because the employee took a day off, or because he worked longer than 8 hours on some days during the period, or because he worked fewer than 8 hours on some days, or because he worked more then 11 days. In any of these circumstances the employee's basic rate would still be $1.75 an hour. If in the next semimonthly period there are 10 working days the rate would be computed by dividing the salary of $154 by 80 working hours, or 10 days of 8 hours each. The basic rate would therefore be $1.925 an hour. The rate would remain $1.925 an hour even though the employee did not in fact work ten 8-hour days during the period for the reasons indicated above, or for any other reason.

(c) The overtime compensation for each workweek should be computed at not less than time and one-half the established basic rate applicable in the period during which the overtime is worked. Thus, in the example given above all overtime worked in the first half-month would be computed at not less than time and one-half the basic rate of $1.75 an hour; in the second half-month overtime would be paid for at not less than time and one-half the rate of $1.925 an hour. Where a workweek overlaps two semimonthly periods part of the overtime may be performed in one semimonthly period and part in another semimonthly period with a different basic rate. If it is desired to avoid computing overtime compensation in the same workweek at two different rates, the employment arrangement may provide that overtime compensation for each workweek should be computed at the established basic rate applicable in the half-monthly or monthly period during which the workweek ends.

(Sec. 1, 52 Stat. 1060, as amended, 29 U.S.C. 201, *et seq.*)

[20 FR 5681, Aug. 6, 1955, as amended at 32 FR 3293, Feb. 25, 1967]

§ 548.302 Average earnings for period other than a workweek.

(a) Section 548.3(b) authorizes as an established basic rate: ''A rate per hour which is obtained by averaging the earnings, exclusive of payments described in paragraphs (1) through (7) of section 7(e) of the act, of the employee for all work performed during the workday or any other longer period not exceeding sixteen calendar days for which such average is regularly computed under the agreement or understanding. Such a rate may be used to compute overtime compensation for all the overtime hours worked by the employee during the particular period for which the earnings average is computed.''

(b)(1) The ordinary method of computing overtime under the act is at the employee's regular rate of pay, obtained by averaging his hourly earnings for each workweek. Section 548.3(b) authorizes overtime to be computed on the basis of the employee's average hourly earnings for a period longer or shorter than a workweek. It permits the payment of overtime compensation on the basis of average hourly earnings for a day, a week, two weeks or any period up to 16 calendar days, if the period is established and agreed to with the employee prior to the performance of the work.[9] The agreement or understanding may contemplate that the basic rate will be the average hourly earnings for a day or a specified number of days within the sixteen day limit, or it may provide that the basic rate will be the average

[9] Averaging over periods in excess of 16 calendar days may in appropriate cases be authorized by the Administrator under § 548.4.

hourly earnings for the period required to complete a specified job or jobs.

Example 1. An employee is employed on a piece-work basis with overtime after 8 hours a day and on Saturday. Ordinarily his overtime compensation would be computed by averaging his earnings for the entire workweek to arrive at the regular rate of pay and then computing the overtime compensation due. Under this subsection of the regulations the employer and the employee may agree to compute overtime on the basis of the average hourly earnings for each day. Similarly, in a situation involving a bi-weekly or a semi-monthly pay period the employer may find it convenient to compute overtime on the basis of the average hourly earnings for the bi-weekly or semi-monthly period.[10]

Example 2. An employee, who normally would come within the forty hour provision of section 7(a) of the Act, is paid a fixed amount of money for the completion of each job. Each job takes 2 or 3 days to complete. Under the employment agreement, the employee is entitled to time and one-half an authorized basic rate for all hours worked in excess of forty in the workweek. The authorized basic rate is the employee's average hourly earnings for each job. Suppose he completes two jobs in a particular workweek and all his overtime hours are on job No. 2. The employee's average hourly earnings on job No. 2 may be used to compute his overtime pay.

(2) In this connection it should be noted that although the basic rate is obtained by averaging earnings over a period other than a workweek the number of overtime hours under the act must be determined on a workweek basis.

(c) In computing the basic rate under § 548.3(b), the employer may exclude from the computation the payments which he could exclude in computing the ''regular'' rate of pay.[11]

[20 FR 5681, Aug. 6, 1955, as amended at 26 FR 7731, Aug. 18, 1961]

§ 548.303 Average earnings for each type of work.

(a) Section 548.3(c) authorizes as an established basic rate: ''A rate per hour which is obtained by averaging the earnings, exclusive of payments described in paragraphs (1) through (7) of section 7(e) of the act, of the employee for each type of work performed during each workweek, or any other longer period not exceeding sixteen calendar days, for which such average is regularly computed under the agreement or understanding. Such a rate may be used to compute overtime compensation, during the particular period for which such average is computed, for all the overtime hours worked by the employee at the type of work for which the rate is obtained.''

(b) Section 548.3(c) differs from § 548.3(b) in this way: Section 548.3(b) provides for the computation of the basic rate on the average of all earnings during the specified period; § 548.3(c) permits the basic rate to be computed on the basis of the earnings for each particular type of work. Thus, if the employee performs different types of work, each involving a different rate of pay such as different piece-rate, job rates, or a combination of these with hourly rates, a separate basic rate may be computed for each type of work and overtime computed on the basis of the rate or rates applicable to the type of work performed during the overtime hours.

Example. An employee who is paid on a weekly basis with overtime after 40 hours works six 8-hour days in a workweek under an agreement or understanding reached pursuant to this subsection. He performs three different types of piecework, each at a different rate of pay. The basic rates to be used for computing overtime in this situation would be arrived at by dividing the earnings for each type of work by the number of hours during which that type of work was performed. There would thus be three different basic rates, one for each type of work. Since the overtime hours used in this illustration occur on the sixth day, the types of work performed on the sixth day would determine the basic rate or rates on which overtime would be computed that week. Thus, if the average hourly earnings for the three types of work are respectively $1.70 an hour in type A, $1.80 an hour in type B, and $2 an hour in type C, and on the sixth day the employee works on type B, his overtime premium for the sixth day would be one-half the basic

[10] See § 548.301 (c) for a discussion of the method of computing overtime for an employee paid on a semi-monthly basis.

[11] See §§ 778.200 through 778.225 of this chapter for an explanation of what payments may be excluded.

rate of $1.80 an hour, multiplied by the 8 hours worked on that day.

(Sec. 1, 52 Stat. 1060, as amended, 29 U.S.C. 201, *et seq.*)

[20 FR 5681, Aug. 6, 1955, as amended at 32 FR 3293, Feb. 25, 1967]

§ 548.304 Excluding value of lunches furnished.

(a) Section 548.3(d) authorizes as established basic rates:

The rate or rates which may be used under the Act to compute overtime compensation of the employee but excluding the cost of meals where the employer customarily furnishes not more than a single meal per day.

(b) It is the purpose of § 548.3(d) to permit the employer upon agreement with his employees to omit from the computation of overtime the cost of a free daily lunch or other single daily meal furnished to the employees. The policy behind § 548.3(d) is derived from the Administrator's experience that the amount of additional overtime compensation involved in such cases is trivial and does not justify the bookkeeping required in computing it. Section 548.3(d) is applicable only in cases where the employer customarily furnishes no more than a single meal a day. If more than one meal a day is customarily furnished by the employer all such meals must be taken into account in computing the regular rate of pay and the overtime compensation due.[12] In a situation where the employer furnishes three meals a day to his employees he may not, under § 548.3(d), omit one of the three meals in computing overtime compensation. However, if an employer furnishes a free lunch every day and, in addition, occasionally pays ''supper money''[13] when the employees work overtime, the cost of the lunches and the supper money may both be excluded from the overtime rates.

[20 FR 5682, Aug. 6, 1955, as amended at 21 FR 338, Jan. 18, 1956]

§ 548.305 Excluding certain additions to wages.

(a) Section 548.3(e) authorizes as established basic rates: ''The rate or rates (not less than the rates required by section 6 (a) and (b) of the Act) which may be used under the Act to compute overtime compensation of the employee but excluding additional payments in cash or in kind which, if included in the computation of overtime under the Act, would not increase the total compensation of the employee by more than 50 cents a week on the average for all overtime weeks (in excess of the number of hours applicable under section 7(a) of the Act) in the period for which such additional payments are made.''

(b) Section 548.3(e) permits the employer, upon agreement or understanding with the employee, to omit from the computation of overtime certain incidental payments which have a trivial effect on the overtime compensation due. Examples of payments which may be excluded are: modest housing, bonuses or prizes of various sorts, tuition paid by the employer for the employee's attendance at a school, and cash payments or merchandise awards for soliciting or obtaining new business. It may also include such things as payment by the employer of the employee's social security tax.

(c) The exclusion of one or more additional payments under § 548.3(e) must not affect the overtime compensation of the employee by more than 50 cents a week on the average for the overtime weeks.

Example. An employee, who normally would come within the 40-hour provision of section 7(a) of the Act, is paid a cost-of-living bonus of $260 each calendar quarter, or $20 per week. The employee works overtime in only 2 weeks in the 13-week period, and in each of these overtime weeks he works 50 hours. He is therefore entitled to $2 as overtime compensation on the bonus for each week in which overtime was worked (i.e., $20 bonus divided by 50 hours equals 40 cents an hour; 10 overtime hours, times one-half, times 40 cents an hour, equals $2 per week). Since the overtime on the bonus is more than 50 cents on the average for the 2 overtime weeks, this cost-of-living bonus would not be excluded from the overtime computation under § 548.3(e).

[12] See § 531.37 of this chapter.

[13] See § 778.217(b)(4) of this chapter.

(d) It is not always necessary to make elaborate computations to determine whether the effect of the exclusion of a bonus or other incidental payment on the employee's total compensation will exceed 50 cents a week on the average. Frequently the addition to regular wages is so small or the number of overtime hours is so limited that under any conceivable circumstances exclusion of the additional payments from the rate used to compute the employee's overtime compensation would not affect the employee's total earnings by more than 50 cents a week. The determination that this is so may be made by inspection of the payroll records or knowledge of the normal working hours.

Example. An employer has a policy of giving employees who have a perfect attendance record during a 4-week period a bonus of $10. The employee never works more than 50 hours a week. It is obvious that exclusion of this attendance bonus from the rate of pay used to compute overtime compensation could not affect the employee's total earnings by more than 50 cents a week.[14]

(e) There are many situations in which the employer and employee cannot predict with any degree of certainty the amount of bonus to be paid at the end of the bonus period. They may not be able to anticipate with any degree of certainty the number of hours an employee might work each week during the bonus period. In such situations the employer and employee may agree prior to the performance of the work that a bonus will be disregarded in the computation of overtime pay if the employee's total earnings are not affected by more than 50 cents a week on the average for all overtime weeks during the bonus period. If it turns out at the end of the bonus period that the effect on the employee's total compensation would not exceed 50 cents a week on the average, then additional overtime compensation must be paid on the bonus. (See § 778.209 of this chapter, for an explanation of how to compute overtime on the bonus.)

[14] For a 50-hour week, an employee's bonus would have to amount to $5 a week to affect his overtime compensation by 50 cents.

(f) In order to determine whether the exclusion of a bonus or other incidental payment would affect the total compensation of the employee by not more than 50 cents a week on the average, a comparison is made between his total compensation computed under the employment agreement and his total compensation computed in accordance with the applicable overtime provisions of the Act.

Example. An employee, who normally would come within the 40-hour provision of section 7(a) of the Act, is paid at piece rates and at one and one-half times the applicable piece rates for work performed during hours in excess of 40 in the workweek. The employee is also paid a bonus, which when apportioned over the bonus period, amounts to $2 a week. He never works more than 50 hours a week. The piece rates could be established as basic rates under the employment agreement and no additional overtime compensation paid on the bonus. The employee's total compensation computed in accordance with the applicable overtime provision of the Act, section 7(g)(1)[15] would be affected by not more than 20 cents in any week by not paying overtime compensation on the bonus.[16]

(g) Section 548.3(e) is not applicable to employees employed at subminimum wage rates under learner certificates, or special certificates for handicapped workers, or in the case of employees in Puerto Rico or the Virgin Islands employed at special minimum rates authorized by wage orders issued pursuant to the Act.

[31 FR 6769, May 6, 1966]

§ 548.306 Average earnings for year or quarter year preceding the current quarter.

(a) Section 548.3(f)(1) authorizes as an established basic rate:

A rate per hour for each workweek equal to the average hourly remuneration of the employee for employment during the annual period or the quarterly period immediately

[15] Section 7(g)(1) of the Act provides that overtime compensation may be paid at one and one-half times the applicable piece rate but extra overtime compensation must be properly computed and paid on additional pay required to be included in computing the regular rate.

[16] Bonus of $2 divided by fifty hours equals 4 cents an hour. Half of this hourly rate multiplied by ten overtime hours equals 20 cents.

preceding the calendar or fiscal quarter year in which such workweek ends, provided (i) it is a fact, confirmed by proper records of the employer, that the terms, conditions, and circumstances of employment during such prior period, including weekly hours of work, work assignments and duties, and the basis of remuneration for employment, were not significantly different from the terms, conditions, and circumstances of employment which affect the employee's regular rates of pay during the current quarter year, and (ii) such average hourly remuneration during the prior period is computed by the method or methods authorized in the following subparagraphs.

(b) There may be circumstances in which it would be impossible or highly impracticable for an employer at the end of a pay period to compute, allocate, and pay to an employee certain kinds of remuneration for employment during that pay period. This may be true in the case of such types of compensation as commissions, recurring bonuses, and other incentive payments which are calculated on work performance over a substantial period of time. Since the total amount of straight-time remuneration is unknown at the time of payment the full regular rate cannot be ascertained and overtime compensation could not be paid immediately except for the provisions of § 548.3(f). In many such situations, the necessity for any subsequent computation and payment of the additional overtime compensation due on these types of remuneration can be avoided and all overtime premium pay due under the Act, including premium pay due on such a commission, bonus or incentive payment, can be paid at the end of the pay period rather than at some later date, if the parties to the employment agreement so desire. This is authorized by § 548.3(f)(1), which provides an alternate method of paying overtime premium pay by permitting an employer, under certain conditions, to use an established basic rate for computing overtime premium pay at the end of each pay period rather than waiting until some later date when the exact amounts of the commission, bonus, or other incentive payment can be ascertained. Such established rate may also be used in other appropriate situations where the parties desire to avoid the necessity of recomputing the regular rate from week to week.

(c)(1) The rate authorized by §§ 548.3(f)(1) is an average hourly rate based on earnings and hours worked during the workweeks ending in a representative period consisting of either the four quarter-years or the last quarter-year immediately preceding the calendar or fiscal quarter-year in which the established rate is to be used. Such a rate may be used only if it is a fact, confirmed by proper records of the employer, that the terms, conditions, and circumstances of employment during this prior period were not significantly different from those affecting the employee's regular rates of pay during the current quarterly period. Significant differences in weekly hours of work, work assignments and duties, the basis of remuneration for employment, or other factors in the employment which could result in substantial differences in regular rates of pay as between the two periods will render the use of an established rate based on such a prior period inappropriate, and its use is not authorized under such circumstances.

(2) However, an increase in the basic salary or other constant factor would not preclude the use of such a rate provided that accurate adjustments are made. For instance, assume that during the previous annual period an employee was compensated on the basis of a weekly salary of $70 plus a commission of 1 percent of sales. If his weekly salary is raised to $80 for the next annual period (assuming he still receives his commission of 1 percent of sales) the annual rate on which the established rate is to be computed must be adjusted by an increase of $520 ($10×52 weeks). For instance, assume the above employee earned a total of $4,244 and worked 2,318 hours during the previous annual period when his salary was $70 per week. Normally his established basic rate would be computed by dividing 2,318 hours into $4,244, thus arriving at a rate of $1.83. However, since the rate must reflect the increase in salary it must be computed by adding the anticipated increase to the pay received during the previous annual period ($4,244+ $520=$4,764). The established basic rate would then be $2.05.

(d) Establishment of the rate explained in paragraphs (b) and (c) of this

section is authorized under the circumstances there stated, provided it is computed in accordance with § 548.3(f)(2), which prescribes the following method: First, all of the employees' remuneration for employment during the workweeks ending in the representative four-quarter or quarter-year period immediately preceding the current quarter, except overtime premiums and other payments excluded from the regular rate under section 7(e) of the Act, must be totaled. All straight-time earnings at hourly or piece rates or in the form of salary, commissions, bonus or other incentive payments, and board, lodging, or other facilities to the extent required under section 3(m) of the Act and Part 531 of this chapter, together with all other forms of remuneration paid to or on behalf of the employee must be included in the above total. Second, this total sum must be divided by the total number of hours worked during all the workweeks ending in the prior period for which such remuneration was paid. The average hourly rate obtained through this division may be used as the established rate for computing overtime compensation in any workweek, in which the employee works in excess of the applicable maximum standard number of hours, ending in the calendar or fiscal quarter-year period following the four-quarter or quarterly period used for determination of this rate. This is authorized irrespective of any fluctuations of average straight-time hourly earnings above or below such rate from workweek to workweek within the quarter.

(e) As a variant to the method of computation described in paragraph (d) of this section, it is provided in § 548.3(f)(3), with respect to situations 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, a one-month grace period may be used. This method is authorized, for example, in employment situations where the computation of bonuses, commissions, or other incentive payments cannot be made immediately at the end of the four-quarter or quarterly base period. If this one month grace period is used, it will be deemed in compliance with § 548.3(f)(1) to use the basic rate authorized therein for the quarter commencing one month after the next preceding four-quarter or quarter-year period. To illustrate, suppose an employer and employee agree that the employee will be paid for overtime work at one and one-half times a basic rate computed in accordance with § 548.3(f)(1), but on the pay day for the first workweek ending in the current quarter his records do not show all commissions earned by the employee in the preceding quarter. The employer and employee may therefore elect to use a one month grace period. This would mean that a basic rate for the quarter January 1–March 31, for example, which is derived from the prior four-quarter (January 1–December 31) or quarterly (October 1–December 31) period, as the case may be, would be applied during a quarterly period commencing one month later (February 1–April 30) than the period (January 1–March 31) in which it would otherwise be applicable. The same adjustment would be made in succeeding quarters. Once the grace method of computation is adopted it must be used for each successive quarter.

(f) The established basic rate must be designated and substantiated in the employer's records as required by part 516 of this chapter, and other requirements of such part with respect to records must be met. An agreement or understanding between the parties to use such rate must be reached prior to the quarter-year period in which the work to which it is applied is performed. The agreement or understanding may be limited to a fixed period or may be a continuing one, but use of the established rate under such an agreement or understanding is not authorized for any period in which terms, conditions, and circumstances of employment become significantly different from those obtaining during the period from which the rate was derived. This method of computation cannot be used if there is any change in the employee's position, method of pay, or amount of salary or if the employee was not employed during the full period used to determine the rate.

(g) To function properly and to provide, over an extended period, overtime premium pay substantially equivalent to the pay the employee would receive if overtime were paid on the true regular rate, the plan must provide that overtime be computed on the established basic rate in every overtime week without regard to the fact that in some weeks the employee receives more premium pay than he would using the true regular rate and in some weeks less. Plans initiated pursuant to this section are based on averages and, if properly applied, will yield substantially the same overtime compensation in a representative period as the employee would have received if it were computed on the true regular rate.

(h) The following examples assume the employee is due overtime premium pay for hours worked over 40 in the workweek.

(1) *Example.* A sales employee whose applicable maximum hours standard is 40 hours enters into an agreement with his employer that he will be paid a salary plus a commission based on a certain percentage of sales. He agrees that this compensation will constitute his total straight-time earnings for all hours worked each week, provided such compensation equals or exceeds the applicable minimum wage.

The employee further agrees that he is to receive overtime premium pay for each workweek on the normal pay day for that week; based each quarter on one-half his established basic rate derived by taking the hourly average of the total straight-time remuneration he received during the workweeks ending in the four-quarter period immediately preceding the current quarter. For example, his established basic rate for each workweek ending in the first quarter of 1964 (January through March) is determined by computing his average hourly rate for employment during all workweeks ending in the four quarter periods of 1963.

Assume the employee worked the following number of hours and received the straight-time pay indicated:

Line No.	Quarters	Pay		Hours worked	
1	1st—1963	$1,074	.....	550	.....
2	2d—1963	980	$980	480	489
3	3d—1963	1,069	1,069	542	542
4	4th—1963	1,365	1,365	619	619
5	1, 2, 3, 4—1963	4,488	.....	2,200	.....
6	1st—1964	.....	1,168	.....	531
7	2, 3, 4 (1963) 1 (1964).	.....	4,582	.....	2,181

The employee's basic rate for the first quarter of 1964 (line 6) is determined by the hours worked and pay received in the four previous quarters (lines 1, 2, 3 and 4). Total pay received during that period ($4,488.00, line 5) is divided by the total hours worked (2,200 hours, line 5) to derive the established basic rate ($2.04 per hour). This is the hourly rate on which overtime is computed in each workweek ending in the first quarter of 1964 in which the employee worked in excess of the applicable maximum hours standard. For instance, if in the first week of that quarter the employee worked 47 hours he would be due his guaranteed salary, his commission (at a later date) plus $7.14 as overtime premium pay (7 hours×2.04× 1/2). It does not matter that the employee actually earned and ultimately received $90.71 in salary and commission as his total straight-time pay for that week and that his true hourly rate would be only $1.93 ($90.71÷47 hours). The established basic rate is an average rate and is designed to be used, and must be used, in every overtime week in the quarter for which it was computed, without regard to the employee's true hourly rate in the particular week.

The employee's basic rate for the second quarter of 1964 will be similarly computed at the end of the first quarter of that year by adding together the hours worked and pay received in the second, third, and fourth quarters of 1963 and the first quarter of 1964 (lines 2, 3, 4 and 6) so that the totals now reflect the figures in line 7. The regular rate is again computed by dividing pay received ($4,582.00) by hours worked (2,181) and the new basic rate would be $2.10.

(2) *Example.* Assume that an employee employed under a similar arrangement agrees to receive overtime premium pay for each workweek on the

normal pay day, based each quarter on one-half his established basic rate determined by the *quarterly* method rather than by the *annual* method previously discussed. His established basic rate for the first quarter of 1964 would therefore be determined by computing his average hourly rate for the *last quarter* of 1963. To illustrate, if in the latter quarter the employee received $1,156.00 in straight time compensation and worked 561 hours, his basic rate for the first quarter of 1964 would therefore be $2.06 ($1,156.00÷561 hours). During the overtime weeks in this quarter there would be due him, in addition to his straight time compensation, premium pay of $1.03 ($2.06× 1/2) for each hour he works in excess of the applicable maximum hours standard.

As in the previous example the established basic rate must be used in every overtime week in the quarter for which it was computed without regard to the employee's true hourly rate in the particular quarter.

(Sec. 1, 52 Stat. 1060, 1062, as amended, 29 U.S.C. 201, *et seq.*)

[28 FR 11266, Oct. 22, 1963, as amended at 32 FR 3293, Feb. 26, 1967]

RATES AUTHORIZED ON APPLICATION

§ 548.400 Procedures.

(a) If an employer wants to use an established basic rate other than one of those authorized under § 548.3, he must obtain specific prior approval from the Administrator. For example, if an employer wishes to compute overtime compensation for piece workers for each workweek in a 4-week period at established basic rates which are the straight-time average hourly earnings for each employee for the immediately preceding 4-week period, he should apply to the Administrator for authorization. The application for approval of such a basic rate should be addressed to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. No particular form of application is required but the minimum necessary information outlined in § 548.4 should be included. The application may be made by an employer or a group of employers. If any of the employees covered by the application is represented by a collective bargaining agent, a joint application of the employer and the bargaining agent should be filed. It is not necessary to file separate applications for each employee. One application will cover as many employees as will be paid at the proposed basic rate or rates.

(b) Prior approval of the Administrator is also required if the employer desires to use a basic rate or basic rates which come within the scope of a combination of two or more of the paragraphs in § 548.3 unless the basic rate or rates sought to be adopted meet the requirements of a single paragraph in § 548.3. For instance, an employee may receive free lunches, the cost of which, by agreement or understanding, is not to be included in the rate used to compute overtime compensation.[17] In addition, the employee may receive an attendance bonus which, by agreement or understanding, is to be excluded from the rate used to compute overtime compensation.[18] Since these exclusions involve two paragraphs of § 548.3, prior approval of the Administrator would be necessary unless the exclusion of the cost of the free lunches together with the attendance bonus do not affect the employee's overtime compensation by more than 50 cents a week on the average, in which case the employer and the employee may treat the situation as one falling within a single paragraph, § 548.3(e).

(Sec. 1, 52 Stat. 1060, as amended, 29 U.S.C. 201, *et seq.*)

[20 FR 5682, Aug. 6, 1955, as amended at 21 FR 338, Jan. 18, 1956; 32 FR 3294, Feb. 25, 1967]

§ 548.401 Agreement or understanding.

If the agreement or understanding establishing the basic rate is in writing, whether incorporated in a collective bargaining agreement or not, a copy of the agreement or understanding should be attached to the application. If it is not in writing, however, the application to the Administrator for approval of a basic rate should contain a written statement describing the substance of the agreement or understanding, including the proposed effective date and

[17] See § 548.304.

[18] See § 548.305.