

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 term of the agreement or understanding. The term of the agreement or understanding may be of definite duration, or may run indefinitely until modified or changed. If an agreement or understanding is modified, a new application for authorization should be made.¹⁹

[20 FR 5683, Aug. 6, 1955, as amended at 21 FR 338, Jan. 18, 1956]

§ 548.402 Applicable overtime provisions.

The application should also contain a description of the terms of employment relating to overtime so that the Administrator can determine how the established basic rate will be used if it

is approved. For instance, if the employees are to be paid time and one-half the basic rate for all hours worked in excess of 35 each workweek, this should be stated in the application. If the employees are to be paid double time for work on Sundays the application should so state.

[20 FR 5683, Aug. 6, 1955]

§ 548.403 Description of method of calculation.

The established basic rate for which approval will be sought will normally be a formula or method of calculation of a rate rather than a specific dollars and cents rates.²⁰ The application should contain a complete description of the formula or method of calculation of the established basic rate, including any necessary examples which will enable the Administrator to understand how the rate will be computed and applied.

[20 FR 5683, Aug. 6, 1955]

§ 548.404 Kinds of jobs or employees.

The application should describe or otherwise identify the employees to whom the established basic rate will apply. The individual employees need not be identified by name but may be described in terms of job classification, department, location or other appropriate identifying characteristics.

[20 FR 5683, Aug. 6, 1955]

§ 548.405 Representative period.

(a) The application must set forth the facts relied upon to show that the established basic rate is substantially equivalent to the average hourly earnings of the employee exclusive of overtime premiums over a representative period of time.²¹ The basic rate will be considered "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 approximately

¹⁷ See § 548.304.

¹⁸ See § 548.305.

¹⁹ See § 548.200 for a further explanation of the requirements as to the agreement or understanding establishing the basic rate.

²⁰ See § 548.200.

²¹ See §§ 778.200 through 778.207 of this chapter for further discussion of overtime premiums which may be excluded from the regular rate of pay.