

## § 548.1

548.501 Overtime hours based on nonstatutory standards.

548.502 Other payments.

AUTHORITY: Sec. 7, 52 Stat. 1063, as amended; 29 U.S.C. 207, unless otherwise noted.

### Subpart A—General Regulations

SOURCE: 20 FR 5679, Aug. 6, 1955, unless otherwise noted.

#### § 548.1 Scope and effect of regulations.

The regulations in this part set forth the requirements for authorization of established basic rates to be used in the computation of overtime pay in accordance with section 7(g)(3) of the Fair Labor Standards Act of 1938, as amended. Payment of overtime compensation in accordance with other subsections of section 7 of the Act is explained in part 778 of this title (Interpretative Bulletin on Overtime Compensation).

#### § 548.2 General conditions.

The requirements of section 7 of the Act with respect to the payment of overtime compensation to an employee for a workweek longer than the applicable number of hours established in section 7(a) of the Act, will be met under the provisions of section 7(g)(3) of the Act by payments which satisfy all the following standards:

(a) Overtime compensation computed in accordance with this part and section 7(g)(3) of the Act is paid pursuant to an agreement or understanding arrived at between the employer and the employee or as a result of collective bargaining before performance of the work;

(b) A rate is established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder;

(c) The established basic rate is a specified rate or a rate which can be derived from the application of a specified method of calculation;

(d) The established basic rate is a bona fide rate and is not less than the minimum hourly rate required by applicable law;

(e) The basic rate so established is authorized by § 548.3 or is authorized by the Administrator under § 548.4 as being substantially equivalent to the average

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hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

(f) Overtime hours are compensated at a rate of not less than one and one-half times such established basic rate;

(g) The hours for which the employee is paid not less than one and one-half times such established basic rate qualify as overtime hours under section 7(e) (5), (6), or (7) of the Act;

(h) The number of hours for which the employee is paid not less than one and one-half times such established basic rate equals or exceeds the number of hours worked by him in any workweek in excess of the maximum workweek applicable to such employees under subsection 7(a) of the Act;

(i) The employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of section 7(e) of the Act are not less than the minimum hourly rate required by this Act or other applicable law;

(j) Extra overtime compensation is properly computed and paid on other forms of additional pay which have not been considered in arriving at the basic rate but which are required to be included in computing the regular rate.

[20 FR 5679, Aug. 6, 1955, as amended at 26 FR 7731, Aug. 18, 1961]

#### § 548.3 Authorized basic rates.

A rate which meets all of the conditions of § 548.2 and which in addition satisfies all the conditions set forth in one of the following paragraphs will be regarded 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 may be used in computing overtime compensation for purposes of section 7(g)(3) of the Act, and § 548.2:

(a) 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) 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.

(c) 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.

(d) 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.

(e) 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.

(f)(1) A rate per hour for each workweek equal to the average hourly remuneration of the employee for em-

ployment during the annual period or the quarterly period immediately 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, or differ only because of some change in basic salary or similar nonfluctuating factor for which suitable adjustments have been made in the calculations to accurately reflect such change and (ii) such average hourly remuneration during the prior period is computed by the method or methods authorized in the following paragraphs.

(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

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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 em-

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ployee'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.

## 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,<sup>1</sup> and to allow, under specific conditions, the use of an established

<sup>1</sup>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.