

ing amendment of Title 10, Chapter I, Part 40, Code of Federal Regulations, is published as a document subject to codification to be effective thirty (30) days after publication in the FEDERAL REGISTER.

Section 40.13(c) (2) is amended to read as follows:

§ 40.13 Unimportant quantities of source material.

(c) * * *

(2) Source material contained in the following products: (i) glazed ceramic tableware, provided that the glaze contains not more than 20 percent by weight source material; (ii) glassware, glass enamel and glass enamel frit containing not more than 10 percent by weight source material; but not including commercially manufactured glass brick, pane glass, ceramic tile or other glass, glass enamel or ceramic used in construction;

(Sec. 161, 68 Stat. 948; 42 U.S.C. 2201. Interpret or apply sec. 62, 68 Stat. 932; 42 U.S.C. 2092)

Dated at Washington, D.C., this 2d day of November 1964.

For the Atomic Energy Commission.

W. B. McCool,
Secretary to the Commission.

[F.R. Doc. 64-11647; Filed, Nov. 16, 1964; 8:45 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 56302]

PART 1—CUSTOMS DISTRICTS, PORTS, AND STATIONS

Customs Station at Hogsburg, N.Y.; Supervision

The Customs station at Hogsburg, New York, formerly under the supervision of the port of entry of Roosevelttown, New York, has, since the revocation of the port of entry of Roosevelttown and the designation of the port of entry of Massena, N.Y., by Treasury Decision 54834 (24 F.R. 3109), been under the supervision of the port of Massena. To reflect this change, § 1.2(d) is hereby amended by substituting "Massena" for "Roosevelt" in the column headed "Port of Entry having supervision" for Hogsburg, New York, in District No. 7.

(R.S. 161, as amended 251; 5 U.S.C. 22, 19 U.S.C. 66)

[SEAL] LESTER D. JOHNSON,
Acting Commissioner of Customs.

Approved: November 9, 1964.

JAMES POMEROY HENDRICK,
Acting Assistant Secretary
of the Treasury.

[F.R. Doc. 64-11680; Filed, Nov. 16, 1964; 8:48 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

PART 3—STATEMENTS OF GENERAL POLICY OR INTERPRETATION

Aminopyrine or Dipyrone Drug Preparations for Human Use; Directions and Warnings

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502(f), 701(a), 52 Stat. 1051, 1055; 21 U.S.C. 352(f), 371(a)), and under the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (21 CFR 2.90; 29 F.R. 471), Part 3 is amended by adding thereto a new section as follows:

§ 3.44 Aminopyrine or dipyrone drug preparations for human use; directions and warnings.

(a) Because of the increasing number of reports of fatal agranulocytosis associated with the use of aminopyrine (4-dimethylamino-2,3-dimethyl-1-phenyl-3-pyrazolin-5-one) and dipyrone (1-phenyl-2,3-dimethyl-5-pyrazolone-4-methylaminomethanesulfonate sodium), the Commissioner of Food and Drugs convened an ad hoc Committee on Aminopyrine and Dipyrone. The members of the committee consisted of authorities in the fields of hematology, internal medicine, neurology, pediatrics, and pharmacology. This committee considered the questions of safety and effectiveness of aminopyrine and dipyrone and reported its findings and recommendations to the Commissioner of Food and Drugs. Copies of the committee's report and recommendations are available upon request, directed to the Office of Public Information, Food and Drug Administration, Washington, D.C., 20204. The committee found:

(1) Aminopyrine and dipyrone, a derivative of aminopyrine, are capable of causing and have caused fatal agranulocytosis.

(2) Relatively small amounts of these drugs given intermittently over a period of time, as well as regular and continued administration, can precipitate the reaction of agranulocytosis.

(3) In most instances, other antipyretics and analgesics that are much safer should be used in preference to aminopyrine or dipyrone.

(4) The only conditions in which aminopyrine or dipyrone are known to be possibly indicated are febrile convulsions in children, where a parenteral antipyretic may be needed, and in rare instances of Hodgkin's disease and similar malignant diseases in which the fever cannot be controlled by any other means.

(b) The committee summarized its recommendations as follows:

1. It is recommended that aminopyrine and dipyrone for the present be retained on the market, but that the following statements be included in the labeling of the drugs:

All brochures, mailing pieces, detail pieces, advertising, and other labeling should contain the following paragraphs, in this order:
Warning—THIS DRUG MAY CAUSE FATAL AGRANULOCYTOSIS. (This should immediately follow the name of the drug.)

Caution—This drug should be used only in those conditions in which it is specifically indicated and in which other less toxic drugs have proved ineffective or are not tolerated. The potential benefit accruing from the use of this drug must be weighed against the possibility of fatal agranulocytosis.

Indications for use. Aminopyrine and aminopyrine derivatives (dipyrone preparations) should be restricted for use in serious or life-threatening situations where salicylates or similar drugs are known to be ineffective or are contraindicated or not tolerated.

Duration of administration. Fatal agranulocytosis has been reported after short-term use, intermittent use, and after long-term administration. Therefore, the use of these agents should be as brief as possible.

Precautions. Frequent white blood cell and differential counts should be carried out. However, it is emphasized that agranulocytosis may occur precipitously without prior warning. The drug should be discontinued at the first evidence of any alteration of the blood count or sign of agranulocytosis, and the patient should be instructed to discontinue use of the drug at the first indication of sore throat or sign of other infection in the mouth or throat (pain, swelling, tenderness, ulceration).

Dosage. Adults: The usual antipyretic dose should not exceed 1/2 to 1 gram per dose, nor should more than 3 grams total daily dosage be used. If the desired effect is not achieved within a very few days, use of the drug should be discontinued.

Children: 250 to 500 milligrams per dose, repeated in 3 to 4 hours if necessary. Use of the drug should be as brief as possible.

2. It is recommended that every effort be made through educational media to emphasize the identical nature of aminopyrine and dipyrone insofar as toxicity is concerned.

3. It is further recommended that the official name of dipyrone be changed to aminopyrinesulfonate sodium, if possible. The purpose of this is to achieve the objective of Item 2 above.

4. The committee suggests that the panel be recalled by the Commissioner of the Food and Drug Administration within approximately one year after these recommendations have been fully implemented. The purpose of such a meeting would be to ascertain whether the use of dipyrone and aminopyrine and the cases of fatal agranulocytosis associated with the use of these drugs had been noticeably reduced by the method proposed. If the recommended labeling changes do not have the desired effect, other recommendations would need to be considered at that time.

(c) The committee also decided that a letter should be sent to all physicians to remind them of the close similarity and toxicity of aminopyrine and dipyrone.

(d) On the basis of the available evidence, including the findings and recommendations of the committee, the Commissioner of Food and Drugs finds and determines with respect to any drug preparation intended for administration to man that contains aminopyrine or dipyrone:

(1) Such drugs are unsafe and are regarded as misbranded within the meaning of section 502(f) (1) and (2) and section 502(j) of the Federal Food,

Drug, and Cosmetic Act when labeled or advertised for routine use as antipyretics or analgesics.

(2) Regulatory proceedings may be initiated with regard to the continued marketing of any such preparations with labeling or advertising offering such drugs for routine use as antipyretics or analgesics.

(3) Such preparations may be approved as safe and effective for marketing on the basis of new-drug applications containing labeling to the following effect, which labeling differs substantially from the labeling that has been commonly employed for many years in the marketing of such drugs:

(i) The label and labeling of the drug contains prominently and conspicuously, immediately following the trade name of the drug, without any intervening written, printed or graphic matter, the following:

(a) A quantitative declaration of the aminopyrine content; or

(b) A quantitative declaration of the dipyrone content with the name "dipyrone" followed immediately and conspicuously in parentheses by the declaration "aminopyrine derivative"; and

(c) The statement "Warning:—This drug may cause fatal agranulocytosis."

(ii) Labeling on or within the package from which the drug is to be dispensed and any other labeling for the drug that furnishes or purports to furnish information for use, or which prescribes, recommends, or suggests a dosage for the use of the drug, bears, in addition to the information required in this subparagraph, information to the following effect:

WARNING—THIS DRUG MAY CAUSE FATAL AGRANULOCYTOSIS.

CAUTION: This drug should be used only in those conditions in which it is specifically indicated and in which other less toxic drugs have proved ineffective or are not tolerated. The potential benefit accruing from the use of this drug must be weighed against the possibility of fatal agranulocytosis.

Indications for use. Aminopyrine and aminopyrine derivatives (dipyrone preparations) should be restricted to use for their antipyretic effect in serious or life-threatening situations where salicylates or similar drugs are known to be ineffective or are contraindicated or not tolerated.

Duration of administration. Fatal agranulocytosis has been reported after short-term use, intermittent use, and after long-term administration. Therefore, the use of these agents should be as brief as possible.

Precautions. Frequent white blood cell and differential counts should be carried out. However, it is emphasized that agranulocytosis may occur precipitously without prior warning. The drug should be discontinued at the first evidence of any alteration of the blood count or sign of agranulocytosis, and the patient should be instructed to discontinue use of the drug at the first indication of sore throat or sign of other infection in the mouth or throat (pain, swelling, tenderness, ulceration).

Dosage. Adults: The usual antipyretic dose should not exceed ½ to 1 gram per dose, nor should more than 3 grams total daily dosage be used. If the desired effect is not achieved within a very few days, use of the drug should be discontinued.

Children: 250 to 500 milligrams per dose, repeated in 3 to 4 hours if necessary. Use of the drug should be as brief as possible.

(4) A new-drug application for such a preparation should include a commitment that all advertising for the drug will bear the information required by subparagraph (3)(i) of this paragraph, and that any advertisement that provides any information regarding indications or dosage recommendations will include the information required to appear in the package labeling by subparagraph (3)(ii) of this paragraph and will not recommend or suggest use of the drug under any other conditions.

(5) A new-drug application will be regarded as approvable if it contains satisfactory information of the kinds required by items 2, 3, 4, 6, 7 and 9 of the new-drug application form contained in § 130.4(c) of this chapter.

(6) Regulatory proceedings may be initiated with regard to the interstate shipment of any such preparations labeled, or advertised contrary to this statement of policy.

(7) No regulatory proceedings will be initiated with regard to the continued marketing of preparations of aminopyrine or dipyrone under labeling and advertising complying with this section; *Provided*, That within 90 days from the date of publication of this statement of policy in the FEDERAL REGISTER:

(i) The manufacturer, packer, or distributor of the drug submits a satisfactory new-drug application covering the marketing of the article in accord with this section; and

(ii) The applicant, starting from the thirtieth day after publication of this statement in the FEDERAL REGISTER, maintains records and submits reports in compliance with the provisions of § 130.13 of this chapter, including reports within intervals of 3 months during the first year; 6 months during the second year; and at yearly intervals thereafter.

(Secs. 502(f), (j), 701(a); 52 Stat. 1051, 1055; 21 U.S.C. 352(f), (j), 371(a))

Dated: November 10, 1964.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 64-11645; Filed, Nov. 16, 1964; 8:45 a.m.]

Title 24—HOUSING AND HOUSING CREDIT

Chapter II—Federal Housing Administration, Housing and Home Finance Agency

SUBCHAPTER A—GENERAL

PART 200—INTRODUCTION

Subpart D—Delegations of Basic Authority and Functions

ASSISTANT COMMISSIONER—COMPTROLLER AND DEPUTY, AND FINANCE COMMITTEE

In § 200.77 paragraph (h) is amended to read as follows:

§ 200.77 Assistant Commissioner—Comptroller and Deputy.

(h) (1) To submit to the Treasury Department authorizations for:

(i) Investment of moneys held in the various insurance funds, not needed for the current operations of the FHA, in bonds or other obligations of the United States, or in bonds or other obligations guaranteed as to principal and interest by the United States; and

(ii) The redemption or sale of investments in bonds or other obligations of the United States, or in bonds or other obligations guaranteed as to principal and interest by the United States, representing undisbursed mortgage proceeds relating to multifamily mortgages assigned to the Commissioner; and

(2) To recommend liquidation of investments and redemption of debentures, to execute assignments in connection with the redemption of debentures held for the account of the insurance funds of the FHA, and to maintain liaison with the Treasury Department in the execution of fiscal proposals.

In § 200.90 paragraph (b) (1) is revoked as follows:

§ 200.90 Finance Committee.

(b) Functions. * * *

(1) [Revoked]

(Sec. 2, 48 Stat. 1246, as amended; sec. 211, 52 Stat. 23, as amended; sec. 607, 55 Stat. 61, as amended; sec. 712, 62 Stat. 1281, as amended; sec. 907, 65 Stat. 301, as amended; sec. 807, 69 Stat. 651, as amended; 12 U.S.C. 1703, 1715b, 1742, 1747k, 1748f, 1750f)

Issued at Washington, D.C., November 12, 1964.

PHILIP J. MALONEY,
Acting Federal Housing Commissioner.

[F.R. Doc. 64-11688; Filed, Nov. 16, 1964; 8:48 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6770]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Treatment of Amounts Received Under Wage Continuation Plans

On June 30, 1964, notice of proposed rule making regarding the Income Tax Regulations (26 CFR Part 1) under sections 72 and 105 of the Internal Revenue Code of 1954 to reflect the amendment made by section 205 of the Revenue Act of 1964 (Public Law 88-272, 78 Stat. 38) and to make certain other changes, was published in the FEDERAL REGISTER (29 F.R. 8223). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments to the regulations as so proposed are hereby adopted, subject to the changes set forth in paragraphs 1 and 2 below. Paragraph 4 of this Treasury decision amends the Income Tax Regulations to reflect the amendment to section 512 of the

Internal Revenue Code of 1954 made by the Act of July 17, 1964 (Public Law 88-380, 78 Stat. 333).

PARAGRAPH 1. Section 1.105 as set forth in paragraph 2 of the notice of proposed rule making, is amended by revising the historical note.

PAR. 2. Section 1.105-4 as set forth in paragraph 3 of the notice of proposed rule making, is amended by revising subparagraphs (5) and (6) (iv) of paragraph (e), examples (1) and (2) of paragraph (f) (2), and by adding example (3) to paragraph (f) (2).

PAR. 3. Section 1.512(b) is amended by adding a new paragraph (14) at the end of section 512(b) and by revising the historical note.

[SEAL] BERTRAND M. HARDING,
Acting Commissioner
of Internal Revenue.

Approved: November 9, 1964.

STANLEY S. SURREY,
Assistant Secretary
of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) under sections 72 and 105 of the Internal Revenue Code of 1954 to section 205 of the Revenue Act of 1964 (Public Law 88-272, 78 Stat. 38), and to make certain other changes, such regulations are amended as follows:

PARAGRAPH 1. Paragraph (c) (1) and examples (1) and (2) of paragraph (f) of § 1.72-15 are amended to read as follows:

§ 1.72-15 Applicability of section 72 to accident or health plans.

(c) *Accident or health benefits attributable to employee contributions.* (1) If a plan to which this section applies provides that any portion of the accident or health benefits is attributable to the contributions of the employee to such plan, then such portion of such benefits is excludable from gross income under section 104(a) (3) and paragraph (d) of § 1.104-1. Neither section 72 nor section 105 applies to any accident or health benefits (whether paid before or after retirement) attributable to contributions of the employee. Since such portion is excludable under section 104(a) (3), such portion is not subject to the dollar limitation of section 105(d) and if such portion is payable after the retirement of the employee, it is excludable without regard to the provisions of § 1.105-4 and section 72.

(f) *Examples.* * * *

Example (1). A, an employee, is a participant in a contributory pension plan described in section 401(a) and exempt under section 501(a). Such plan provides for the payment of a pension to each participant when he retires at age 65 or when he retires earlier if the retirement is due to permanent and total disability. In 1964, A, who was age 52, became totally and permanently disabled because of an injury, was hospitalized, and commenced to receive a pension of \$74 a week under this plan. The weekly amounts received by A do not exceed 75 percent of his "regular weekly rate of wages" under section 105(d). A had contributed \$11,500 to the plan. The plan does not expressly

provide that any portion of the disability pension is purchased with employee contributions. Accordingly, it is presumed that no portion of the disability pension is purchased with A's contributions. The disability pension which A receives qualifies as payments under a wage continuation plan for purposes of section 105(d) and § 1.105-4, and if such payments are the only accident or health benefits which are attributable to the contributions of his employer, such payments are entirely excludable under section 105(d) until A reaches age 65, his normal retirement age under the plan. The payments which A receives after he becomes age 65 are taxable under section 72. The payments which A receives do constitute an annuity as defined in paragraph (b) of § 1.72-2, but since the amounts which he will receive during the first three years after attaining age 65 exceed his contributions, he shall exclude under § 1.72-13 the entire amount of all payments that he receives as an annuity after attaining age 65 until such amounts equal his contributions to the plan, or \$11,500. Thereafter, the payments that he receives under the plan are includible in gross income.

Example (2). B, an employee, is a participant in a contributory profit-sharing plan described in section 401(a) and exempt under section 501(a). Such plan provides that, in the event a participant is absent from work because of a personal injury or sickness, he will be paid \$125 a week out of his account in such plan. Such weekly amount does not exceed 75 percent of B's "regular weekly rate of wages" under section 105(d). Any amount standing to the account of a participant at the time of his separation from service will be paid to him at such time. During 1964, B incurred a personal injury, was hospitalized, and as a result was absent from work for nine weeks. He received nine weekly payments of \$125, or a total of \$1,125, on account of such absence from work. At the time B was injured, he had contributed \$5,000 to the plan. The plan did not expressly provide that a participant's contributions are to be used to provide for the distributions during disability. Accordingly, it is presumed that B's contributions were not used to provide the accident or health benefits under the plan. Since these weekly payments are paid because of B's absence from work due to the injury, and since such payments are considered as attributable to contributions of his employer, such payments are required under section 105(a) to be included in B's gross income except to the extent that they are excludable under section 105(d). If B receives no other payments under a wage continuation plan attributable to contributions of his employer, during the first 30 days in the period of absence \$75 of each weekly payment is excludable from gross income under section 105(d), but \$50 of each weekly payment is includible in gross income under section 105(a). Amounts attributable to the period of absence in excess of 30 days are excludable from gross income under section 105(d) to the extent of \$100 a week and includible in gross income under section 105(a) to the extent of \$25 a week. The excludable portion of payments does not reduce B's investment in the contract or the amount of premiums considered to have been paid by B for purposes of any subsequent computations under section 72.

PAR. 2. Section 1.105 is amended by revising subsection (d) of section 105 and by adding a historical note. These amended and added provisions read as follows:

§ 1.105 Statutory provisions; amounts received under accident and health plans.

SEC. 105. Amounts received under accident and health plans. * * *

(d) *Wage continuation plans.* Gross income does not include amounts referred to in subsection (a) if such amounts constitute wages or payments in lieu of wages for a period during which the employee is absent from work on account of personal injuries or sickness; but this subsection shall not apply to the extent that such amounts exceed a weekly rate of \$100. The preceding sentence shall not apply to amounts attributable to the first 30 calendar days in such period, if such amounts are at a rate which exceeds 75 percent of the regular weekly rate of wages of the employee (as determined under regulations prescribed by the Secretary or his delegate). If amounts attributable to the first 30 calendar days in such period are at a rate which does not exceed 75 percent of the regular weekly rate of wages of the employee, the first sentence of this subsection (1) shall not apply to the extent that such amounts exceed a weekly rate of \$75, and (2) shall not apply to amounts attributable to the first 7 calendar days in such period unless the employee is hospitalized on account of personal injuries or sickness for at least one day during such period. If such amounts are not paid on the basis of a weekly pay period, the Secretary or his delegate shall by regulations prescribe the method of determining the weekly rate at which such amounts are paid.

[Sec. 105 as amended by sec. 7(e), Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 829); sec. 205, Rev. Act 1964 (78 Stat. 38)]

PAR. 3. Section 1.105-4 is amended by revising paragraphs (c), and (d) (1) exclusive of examples, and by adding new paragraphs (e), (f), and (g). These amended and added provisions read as follows:

§ 1.105-4 Wage continuation plans.

(c) *Limitation in the case of absence from work due to sickness for periods commencing prior to January 1, 1964.*

(1) In the case of a period of absence from work on account of sickness commencing prior to January 1, 1964, the exclusion provided by section 105 (d) does not apply to amounts attributable to the first seven calendar days of each such period, unless the employee is hospitalized on account of sickness for at least one day during the period of absence from work. This 7-day rule applies to each period of absence from work because of sickness, regardless of the frequency of such absences or the closeness in time to any prior period of absence from work because of sickness. For example, employee A becomes absent from work because of sickness on Friday, October 4, 1963, and returns to work on the morning of Monday, October 14, 1963. He suffers a relapse and again becomes absent from work on the afternoon of Monday, October 14, 1963. A's return to work on the morning of Monday, October 14, 1963, terminates the first period of absence from work because of sickness, and a new period of absence from work because of sickness begins on the afternoon of Monday, October 14, 1963. The 7-day limitation does not apply if the absence from work is due to personal injury. These rules may be illustrated by the following examples:

Example (1). Employee C normally works five days (Monday through Friday) during each week. On Saturday, October 5, 1963 (a nonworking day), C becomes sick and as a

result, he does not return to work until Thursday, October 17, 1963. The period of absence from work due to sickness commences on Monday, October 7, 1963, and terminates when C returns to work on Thursday, October 17, 1963. If C is not hospitalized during such period of absence from work, section 105(d) does not apply to amounts which C receives under his employer's wage continuation plan attributable to the 7-day period commencing Monday, October 7, 1963, and ending Sunday, October 13, 1963, inclusive.

Example (2). Employee D incurs a personal injury which causes him to be absent from work two days. His regular wages are continued during this period in accordance with the wage continuation plan of his employer. Since D's absence from work was due to a personal injury, rather than a sickness, the 7-day waiting period does not apply, and, subject to the other requirements of section 105(d), D is entitled to an exclusion with respect to the amounts received under the employer's plan attributable to the 2-day period of absence.

(2) For the purpose of starting the 7-day waiting period, if the period of absence due to sickness commences after the start of a working day, the amount received with respect to the portion of such day that the employee is absent from work shall be considered the amount attributable to the first calendar day of the period of absence from work due to sickness. This rule may be illustrated by the following example:

Example. Employee E normally works from 9 a.m. until 5:30 p.m. on five days (Monday through Friday) during each week. From noon on Friday, September 6, 1963, until noon on Monday, September 16, 1963, E is absent from work on account of sickness but is not hospitalized at any time during this period. Section 105(d) does not apply to amounts received by E under his employer's wage continuation plan which are attributable to the calendar period beginning September 6, 1963, and ending September 12, 1963, inclusive. However, if the other requirements of section 105(d) are met, E may exclude from gross income amounts attributable to the period beginning September 13, 1963, and ending at noon on September 16, 1963, inclusive.

(3) If the absence from work is due to sickness, the amount attributable to the first seven calendar days of such absence includes all amounts paid for such seven calendar days, regardless of the number of work days included in such seven calendar days. For example, if on one of such seven calendar days an employee would have worked two 8-hour shifts, the amount he is paid for the two shifts is considered to be an amount attributable to only one calendar day.

(4) An employee is considered to be hospitalized for one day only if he is admitted to and confined in a hospital as a bed patient for at least one hospital day. Entry into a hospital as an in-and-out patient does not constitute hospitalization for purposes of section 105(d). The same applies to mere entry into the outpatient ward or the emergency ward of a hospital.

(d) *Exclusion not applicable to the extent that amounts exceed a weekly rate of \$100 for periods of absence commencing prior to January 1, 1964—(1)* In general. Amounts received under a wage continuation plan, attributable to periods of absence commencing before

January 1, 1964, which are not excludable from gross income as being attributable to contributions of the employee (see § 1.105-1) must be included in gross income under section 105(d) to the extent that the weekly rate of such amounts exceeds \$100. Thus, an employee, who receives \$50 under his employer's wage continuation plan on account of his being absent from work for two days due to a personal injury, cannot exclude the entire \$50 under section 105(d) if the weekly rate of such benefits exceeds \$100. If an employee receives payments under a wage continuation plan for less than a full pay period, the excludability of such payments shall be determined under subparagraph (2) of this paragraph. In all other cases, the weekly rate and excludability of such payments under a wage continuation plan shall be determined under subparagraph (3) of this paragraph. If, with respect to any pay period or portion thereof, the employee receives amounts under two or more wage continuation plans (whether such plans are maintained by or for the same employer or by different employers), the weekly rate and excludability of amounts received under each plan shall be determined under subparagraph (3) of this paragraph and the weekly rate for purposes of section 105(d) shall be the sum of all such weekly rates. This rule may be illustrated by the following examples:

(e) *Limitation in the case of absence from work on account of personal injury or sickness for periods commencing after December 31, 1963.* (1) In the case of periods of absence from work on account of sickness or personal injury commencing after December 31, 1963, the exclusion provided by section 105(d) does not apply to amounts attributable to the first 30 calendar days of each such period, if such amounts are at a rate which exceeds 75 percent of the employee's "regular weekly rate of wages", as determined under subparagraph (5) of this paragraph. If the amounts are at a rate of 75 percent or less of the employee's "regular weekly rate of wages", the exclusion provided by section 105(d) does not apply to amounts attributable to the first 7 calendar days of each such period, unless the employee is hospitalized on account of personal injury or sickness for at least one day during the period of absence from work. The 7- or 30-day waiting period (whichever is applicable) applies to each period of absence from work because of personal injury or sickness, regardless of the frequency of such absences or the closeness in time to any prior period of absence from work because of personal injury or sickness. The waiting period is to be counted by beginning with the first work day for which the employee was absent. These rules may be illustrated by the following examples:

Example (1). Employee A is absent from work because of sickness on Tuesday, January 7, 1964, and returns to work on the morning of Thursday, February 13, 1964. He suffers a relapse and again becomes absent from work on the afternoon of Thursday, February 13, 1964. A's return to work on the morning of Thursday, February 13, 1964,

terminates the first period of absence from work because of sickness, and a new period of absence from work because of sickness begins on the afternoon of Thursday, February 13, 1964.

Example (2). Employee B normally works five days (Monday through Friday) during each week. On Saturday, January 11, 1964 (a nonworking day), B becomes sick or injured and as a result he does not return to work until Monday, February 17, 1964. The period of absence from work commences on Monday, January 13, 1964, and terminates when B returns to work on Monday, February 17, 1964. Assuming B receives amounts under his employer's wage continuation plan at a rate exceeding 75 percent of his "regular weekly rate of wages" (as determined under subparagraph (5) of this paragraph), the exclusion provided by section 105(d) does not apply to amounts B receives under his employer's wage continuation plan which are attributable to the 30-day period commencing Monday, January 13, 1964, and ending Tuesday, February 11, 1964, inclusive. If B receives amounts under his employer's wage continuation plan at a rate which is 75 percent or less of his "regular weekly rate of wages" and he is not hospitalized during the period of absence from work, the exclusion provided by section 105(d) does not apply to amounts B receives which are attributable to the 7-day period commencing Monday, January 13, 1964, and ending Sunday, January 19, 1964, inclusive.

Example (3). Employee C is sick or incurs a personal injury which causes him to be absent from work for two weeks. He receives amounts under his employer's wage continuation plan at a rate which is 75 percent or less of his "regular weekly rate of wages" (as determined under subparagraph (5) of this paragraph) and is hospitalized from the eighth through the eleventh day of his absence. Since C was hospitalized on account of personal injury or sickness for at least one day during the period of absence, the 7-day waiting period does not apply, and, subject to the other requirements of section 105(d), C is entitled to an exclusion with respect to the amounts received under his employer's plan attributable to the two-week period of absence. If C were receiving amounts under his employer's wage continuation plan at a rate exceeding 75 percent of his "regular weekly rate of wages", he would not be entitled to an exclusion under section 105(d).

(2) For the purpose of starting the 7- or 30-day waiting period, whichever is applicable, if the period of absence commences after the start of a working day, the amount received with respect to the portion of such day that the employee is absent from work shall be considered an amount attributable to the first calendar day of the period of absence from work. This rule may be illustrated by the following example:

Example. Employee D normally works from 9 a.m. until 5:30 p.m. on five days (Monday through Friday) during each week. From noon on Wednesday, January 8, 1964, until noon on Monday, February 17, 1964, D is absent from work on account of personal injury or sickness but is not hospitalized at any time during this period. D receives amounts under his employer's wage continuation plan at a rate not exceeding 75 percent of his "regular weekly rate of wages" (as determined under subparagraph (5) of this paragraph). Section 105(d) does not apply to amounts received by D under his employer's wage continuation plan which are attributable to the calendar period beginning January 8, 1964, and continuing through January 14, 1964, inclusive. However, if the other requirements of section 105(d) are met, D may exclude from gross

income amounts attributable to the remainder of the period of absence, ending at noon on Monday, February 17, 1964.

(3) If the exclusion is subject to a 7- or 30-calendar-day waiting period, any amount attributable to such 7- or 30-calendar-day waiting period includes all amounts paid therefor, regardless of the number of work days included in such 7 or 30 calendar days. For example, if on one of the days included in the waiting period, an employee would have worked two 8-hour shifts, the amount he is paid for the two shifts is considered to be attributable to only one calendar day.

(4) An employee is considered to be hospitalized for one day only if he is admitted to and confined in a hospital as a bed patient for at least one hospital day. Entry into a hospital as an in-and-out-patient does not constitute hospitalization for purposes of section 105(d). The same applies to mere entry into the out-patient ward or the emergency ward of a hospital.

(5) (i) In general, the "regular weekly rate of wages", for purposes of section 105(d), shall be the average weekly wages paid for the last four weekly periods falling within a full pay period or full pay periods immediately preceding the commencement of the period of absence. If the employee was absent from work for three or more normal working days during any such pay period, and the amount of wages paid for such pay period was less than the amount of wages paid for the immediately preceding pay period during which the employee was not absent from work for three or more normal working days, then the amount of wages paid for the weekly period or weekly periods falling wholly or partly within the pay period during which each such absence occurred shall not be used in the determination of "regular weekly rate of wages". In such a case, there shall be substituted the amount of wages paid for the last weekly period or weekly periods falling within the pay period or pay periods immediately preceding the pay period or pay periods in which such absence or absences occurred during which the employee was not absent from work for three or more normal working days.

(a) In order to compute wages paid for the last four weekly periods falling within a full pay period or full pay periods immediately preceding the commencement of the period of absence, or any substituted weekly periods therefor, it will be necessary to convert the wages paid for any pay period other than a weekly pay period into a weekly rate or weekly rates of payment of such wages in accordance with the rules stated in subdivision (iv) of this subparagraph. Such weekly rate or weekly rates of wage payments are then used in determining the wages for the last four weekly periods falling within a full pay period or full pay periods immediately preceding the commencement of the period of absence, or any substituted weekly periods therefor.

(b) If the employee does not have four weekly periods falling within a full pay

period or full pay periods preceding his absence during which he was not absent from work for three or more normal working days, then the greatest number of available weekly periods shall be used, consistent with the rules set forth in this subdivision (i), in determining the "regular weekly rate of wages."

(c) If the employee has been employed for a full pay period or more preceding his absence, and has worked for the number of days in a normal work week, but was absent from work for three or more normal working days during each of the pay periods preceding his absence, then the "regular weekly rate of wages" shall be determined by multiplying the employee's actual wages paid for the total number of normal working days in the pay period immediately preceding the employee's absence by the number of days that the employee is expected to work in a normal work week, and by dividing the product by the number of normal work days in such pay period for which wages were paid.

(d) If the employee has not been employed for a full pay period preceding his absence, and has worked for the number of days in a normal work week, the "regular weekly rate of wages" shall be determined by multiplying the employee's actual wages paid for the total number of normal working days preceding the employee's absence by the number of days that the employee is expected to work in a normal work week, and by dividing the product by the number of normal work days for which wages were paid.

(e) If the employee has not worked the number of days in a normal work week, then there is no "regular weekly rate of wages," and the employee will not be permitted an exclusion under section 105(d) for amounts attributable to the first 30 calendar days in the period of absence.

(f) Wages paid by a former employer shall not be used in the determination of "regular weekly rate of wages" as described in this subparagraph.

(ii) In the case of a wage continuation plan of an employer under which the benefits are computed as a specified percentage of average wages, the formula for computing the employee's average wages included in the plan may be used (in lieu of the formula provided in subdivision (i) of this subparagraph) for determining the "regular weekly rate of wages" for purposes of section 105(d), if under the plan—

(a) The definition of wages does not include any items which are not considered "wages" as defined in subdivision (iii) of this subparagraph,

(b) The period for computing average wages is not less than twenty-eight successive calendar days, and does not end earlier than five months preceding the date on which the period of absence commences, and is one in which the employee was at work at least 35 percent of the normal working time, and

(c) The period and formula for computing average wages are applied uniformly with respect to all employees eligible to receive benefits under the plan.

A plan will not fail to meet the conditions of this subdivision merely because different portions of the employee's wages are averaged over different periods for purposes of computing his average wages, so long as each such period meets the requirements in (b) and (c) of this subdivision.

(iii) For the purpose of determining "regular weekly rate of wages" under subdivision (i) or (ii) of this subparagraph, whichever is applicable, an employee's wages shall comprise basic salary, fees, commissions, tips, gratuities, overtime, and any other type of taxable compensation which is normally paid for services. However, wages shall not include any type of compensation which is not normally paid, such as bonuses and incentive payments. An employee's compensation, for the purpose of determining his "regular weekly rate of wages", will not include any compensation which is not currently includible in gross income. For example, an employee's wages for the purpose of this subdivision shall not include deferred compensation paid by the employer which is not includible in gross income until received by the employee, such as employer contributions to a qualified annuity under section 403(a), or employer contributions to an accident or health plan excluded under section 106.

(iv) The following rules shall be used to convert wages for pay periods other than weekly pay periods into weekly rates of wage payments to be used in determining "regular weekly rate of wages" as described in subdivision (i) of this subparagraph.

(a) If wages are paid biweekly, the weekly rate of wage payments shall be one-half of the biweekly wages paid.

(b) If the employee is paid semi-monthly, the weekly rate of wage payments shall be the semi-monthly wages paid multiplied by 24 and divided by 52.

(c) If wages are paid monthly, the weekly rate of wage payments shall be the monthly wages paid multiplied by 12 and divided by 52.

(d) If wages are paid on the basis of a pay period other than a period described in (a) through (c) of this subdivision, the weekly rate of wage payments shall be determined by ascertaining the annual rate of wage payments and dividing by 52.

(e) For the purpose of this subparagraph, if separate portions of an employee's wages are paid on the basis of different pay periods, the weekly rate or weekly rates of wage payments of each portion of wages paid with respect to each pay period shall first be determined under the rules set forth in (a) through (d) of this subdivision and the average weekly rate of each portion of wages, determined in accordance with the rules set forth in subdivision (i) of this subparagraph, shall be aggregated to determine the employee's "regular weekly rate of wages" for purposes of section 105(d).

(v) The provisions of subdivisions (i), (iii) and (iv) of this subparagraph may be illustrated by the following examples:

Example (1). Employee A is a salesman who is paid a basic salary of \$60 per week and, in addition, is paid commissions on a

weekly basis. A became ill and did not report for work beginning Monday, February 17, 1964. For the four-week period preceding the commencement of the period of absence, A was paid the following:

Week of—	Basic salary	Commissions	Total weekly wages
Jan. 20, 1964.....	\$60	\$10	\$70
Jan. 27, 1964.....	60	50	110
Feb. 3, 1964.....	60	30	90
Feb. 10, 1964.....	60	40	100
Total 4-week wages.....			370

A's wages, under the rules set forth in subdivision (iii) of this subparagraph, consist of basic salary plus commissions. Since the amount of A's average weekly wages paid for the last four weekly periods falling within the four pay periods immediately preceding the commencement of his period of absence from work is \$92.50 ($\$370 \div 4$), such amount is considered as the "regular weekly rate of wages" (as computed under subdivision (i) of this subparagraph) for purposes of section 105(d).

Example (2). Assume, in example (1), that A normally works five days during each week (Monday through Friday) and that he was also absent from work for any reason from Monday, February 3, 1964, through Wednesday, February 5, 1964. Since A was absent from work for three normal working days during the pay period of February 3, 1964, and was paid a lesser amount of wages for such pay period than in the immediately preceding pay period during which he was not absent from work (week of January 27), the weekly pay period beginning January 27, 1964 is substituted for the weekly pay period beginning February 3, 1964 in the determination of "regular weekly rate of wages" (as computed under subdivision (i) of this subparagraph) for purposes of section 105(d). The "regular weekly rate of wages" is calculated to be \$97.50, as follows:

Week of:	Total wages
February 10.....	\$100
January 27 (substitute for week of Feb. 3).....	110
January 27.....	110
January 20.....	70
	$390 \div 4 = \$97.50$

Example (3). Employee B is a salesman who is paid a basic salary of \$75 and, in addition, is paid commissions for semi-monthly periods ending on the 15th day and the last day of each month. He was absent from work on account of a personal injury beginning Monday, February 17, 1964. He was paid the following amounts:

Pay period	Salary	Commissions	Total wages
Feb. 1-15, 1964.....	\$75	\$60	\$135
Jan. 16-31, 1964.....	75	50	125

The four weekly periods falling within full pay periods preceding the commencement of the period of absence are the weeks beginning February 9, February 2, January 26, and January 19. B's wages are converted to weekly rates of wage payments per pay period in accordance with the rule set forth in subdivision (iv) (b) of this subparagraph as follows:

From February 1, 1964–February 15, 1964, inclusive:

$$\begin{aligned} \$135 \times 24 &= \$3240.00 \text{ (annual rate)} \\ \$3240.00 &= \$62.31 \text{ (weekly rate)} \\ 52 & \end{aligned}$$

From January 16–31, inclusive:

$$\begin{aligned} \$125 \times 24 &= \$3000.00 \text{ (annual rate)} \\ \$3000.00 &= \$57.69 \text{ (weekly rate)} \\ 52 & \end{aligned}$$

The weekly rates are then used in determining the wages for four weekly periods falling within the pay periods immediately preceding the commencement of B's absence. B's "regular weekly rate of wages" (as computed under subdivision (i) of this subparagraph) is calculated to be \$60.17, as follows:

$$\begin{aligned} \text{February 9-15, inclusive...} & \$62.31 \\ \text{February 2-8, inclusive...} & 62.31 \\ \text{January 26-February 1, inclusive } (\frac{1}{2} \times \$57.69 + \frac{1}{2} \times \$62.31) & 58.35 \\ \text{January 19-25, inclusive...} & 57.69 \\ \hline & 240.66 \div 4 = \$60.17 \end{aligned}$$

Example (4). Employee C is paid semi-monthly on the 5th and 20th of each month and he began working for his present employer at the beginning of the semi-monthly pay period commencing Tuesday, January 21, 1964. C received total wages of \$200 for the pay period of January 21, 1964 through February 5, 1964, inclusive. He was not absent during that pay period. C became sick and was absent from work beginning February 7, 1964. Since employee C does not have four weekly periods falling within a full pay period or full pay periods preceding his absence, the average wages for the last two weekly periods falling within such full pay period will be C's "regular weekly rate of wages" (as computed under subdivision (i) of this subparagraph) for purposes of section 105(d).

Pay period	Hours		Salary per hour		Total salary
	Regular	Overtime	Regular	Overtime	
Month of January 1964.....		16		\$1.875	\$30
Jan. 23–Feb. 5, 1964, inclusive.....	80		\$1.25		100
Feb. 6-19, 1964, inclusive.....	80		1.25		100

Under the rule set forth in subdivision (iv) (c) of this subparagraph, the weekly rates of payment of salary and overtime must be determined separately. Since basic salary is paid biweekly, the weekly rate of payment is determined to be one-half of \$100.00, or \$50.00. The full pay period immediately preceding the commencement of E's absence for overtime compensation ended on January 31, 1964. E's overtime earnings are converted to a weekly rate for such period, as follows:

$$\begin{aligned} \$30.00 \text{ (overtime pay)} \times 12 &= \$360.00 \text{ (annual rate)} \\ \$360.00 &= \$6.93 \text{ (weekly rate)} \\ 52 & \end{aligned}$$

The average wages for the last four weekly periods falling within pay periods immediately preceding the commencement of E's absence with respect to basic salary (weeks of February 13, 6, January 30, and 23) is \$50.00. The average wages for the last four weekly periods falling within the pay period immediately preceding the commencement of E's absence with respect to overtime compensation (weeks of January 25, 18, 11, and 4) is \$6.93. Accordingly, E's "regular weekly rate of wages" (as computed under subdivision (i) of this subparagraph) for the purpose of section 105(d) is \$56.93.

(6) (i) Amounts paid under a wage continuation plan must be converted to a weekly rate in order to determine the percentage of benefits paid in relation to the employee's "regular weekly rate of wages", since such percentage is used in determining the waiting period, if any,

poses of section 105(d), determined to be \$92.31, as follows:

$$\begin{aligned} \$200 \times 24 &= \$4800 \text{ (annual rate)} \\ \$4800 &= \$92.31 \text{ (weekly rate)} \\ 52 & \end{aligned}$$

Example (5). Employee D, an office worker, is paid weekly and is expected to work five days during each week. He has been employed by his present employer for three weeks, but has been absent from work for three normal work days in each of the weeks preceding his illness. He became ill and was absent from work on Monday, February 17, 1964. During the weekly pay period immediately preceding his absence (week of February 10) D was paid \$48 salary. He was paid for two working days during such weekly pay period. D's "regular weekly rate of wages" (as computed under subdivision (i) of this subparagraph), is calculated to be \$120.00, determined as follows:

$$\begin{aligned} \$48 \text{ (total wages)} \times 5 \text{ (normal work days in week)} &= \$120.00 \\ 2 \text{ (number of work days for which wages were paid)} & \end{aligned}$$

Example (6). Employee E is an hourly worker who is paid a salary of \$1.25 per hour. E is paid basic salary on a biweekly basis for the periods beginning every other Thursday and ending every other Wednesday. E is also paid monthly for his overtime work and is compensated for such work at one and one-half times the hourly rate. E worked 16 hours of overtime for his employer during the month of January. E was injured and could not report for work on Friday, February 21, 1964. E returned to work on Monday, March 16, 1964. E was paid as follows for the pay periods indicated:

after which an exclusion is allowable under section 105(d). In order to calculate the weekly rate at which benefits are being paid, reference is made to the particular wage continuation plan. If, in the usual operation of the plan, benefits are paid for the same periods as regular wages, then the pay period of such benefits shall be the period for which a payment of wages is ordinarily made to the employee by the employer. If plan benefits are ordinarily paid for different periods than regular wages, then the pay period of such benefits shall be the period for which payment of such benefits is ordinarily made.

(ii) The weekly rate at which the benefits are paid under a wage continuation plan shall be determined in accordance with the following rules:

(a) If benefits are paid on the basis of a weekly pay period, the weekly rate at which such benefits are paid shall be the weekly amount of such benefits.

(b) If benefits are paid on the basis of a biweekly pay period, the weekly rate at which such benefits are paid shall be one-half of the biweekly rate.

(c) If benefits are paid on the basis of a semimonthly pay period, the weekly rate at which such benefits are paid shall be the semimonthly rate multiplied by 24 and divided by 52.

(d) If benefits are paid on the basis of a monthly pay period, the weekly rate at

which such benefits are paid shall be the monthly rate multiplied by 12 and divided by 52.

(e) If benefits are paid on the basis of a period other than a period described in (a) through (d) of this subdivision the weekly rate at which such benefits are paid shall be determined by ascertaining the annual rate at which such benefits are paid and dividing such annual rate by 52.

(iii) The principles of subdivisions (i) and (ii) of this subparagraph may be illustrated by the following example:

Example. A's employer maintains a non-contributory plan which provides for a monthly benefit of \$400 during periods of absence from work due to personal injury or sickness. A, a salesman, receives regular salary of \$520 per calendar month plus commissions, depending upon the amount of sales made by A during the month. During the month of January 1964, A was paid commissions of \$180. A received a total benefit of \$200 for an absence of two weeks because of illness occurring in February 1964. He was not hospitalized. Since benefits under the salary continuation plan are paid for the same period as regular wages, the pay period of the plan is monthly. A's "regular weekly rate of wages", determined in accordance with the rules set forth in subparagraph (5)

(1) of this paragraph is $\frac{\$161.54}{52} = \$3.11$ (\$700 × 12). For purposes of determining the percentage of benefits paid in relation to A's "regular weekly rate of wages", the weekly rate of the benefits are calculated to be \$92.31, as follows:

$\$400$ (monthly rate) × 12 = \$4,800 (annual rate)

$\frac{\$4,800}{52} = \$92.31$ (weekly rate)

Since \$92.31 does not exceed 75 percent of A's "regular weekly rate of wages", A is entitled to an exclusion under section 105(d) for the second week of absence, subject to the other limitations provided in this section.

(iv) For the purpose of determining whether or not the rate of benefits paid under a wage continuation plan for a period of absence exceeds 75 percent of the employee's "regular weekly rate of wages" (as determined under subparagraph (5) of this paragraph), it is necessary to ascertain the average percentage of benefits paid in relation to the employee's "regular weekly rate of wages" for the first 30 calendar days in the period of absence. Such percentage is derived from a fraction, the numerator of which is the sum of benefits paid (attributable to employer contributions) for the period of absence occurring within the first 30 calendar days, and the denominator of which is the collective sum of the employee's "regular weekly rate of wages" during such period. This rule may be illustrated by the following examples:

Example (1). Employee A is paid a semi-monthly basic salary of \$150 plus commissions. He normally works five days during each week (Monday through Friday). During the month of January 1964, A received

wages of \$150 plus commissions of \$66.67 for each of the semi-monthly pay periods. A became ill on Monday, February 3, 1964, and as a result was absent from work until Monday, February 17, 1964, but was not hospitalized. Under the noncontributory wage continuation plan of A's employer, A received no benefits for the first three working days' absence (Monday through Wednesday) and was paid benefits at the rate of \$100 a week thereafter. A's "regular weekly rate of wages", determined under the rules set forth in subparagraph (5) of this paragraph, is \$100. A is considered to have received average benefits at a rate of 70 percent of his "regular weekly rate of wages", computed as follows:

(1) Week of absence	(2) Benefits paid	(3) Regular weekly rate of wages
1—Feb. 3.....	\$40	\$100
2—Feb. 10.....	100	100
Totals.....	140	200

Average percentage of benefits paid— $\frac{140}{200} = 70\%$. Accordingly, A may exclude amounts attributable to the second week of absence, subject to the other limitations of section 105(d).

Example (2). Assume, in example (1), that A did not return to work until Thursday, February 20, 1964. A is considered to have received average benefits at the rate of 76.92 percent of his "regular weekly rate of wages", computed as follows:

$$\begin{aligned} \text{Plan A—} & \frac{\$100}{2} = \$50.00 \text{ (weekly rate)} \\ & 25.00 \text{ (less amount attributable to employee contributions } (\frac{1}{2})) \\ & 25.00 \text{ (weekly rate of Plan A)} \\ \text{Plan B—} & \frac{\$400 \times 12}{52} = 92.31 \text{ (weekly rate of Plan B)} \\ & \$117.31 \text{ (combined weekly rate at which benefits are paid)} \end{aligned}$$

The \$25 attributable to contributions made by the employee under Plan A would be subject to section 104(a)(3).

(f) Amount of exclusion for periods of absence commencing after December 31, 1963—(1) In general. Amounts received under a wage continuation plan attributable to periods of absence commencing after December 31, 1963, and which are not excludable from gross income as being attributable to contributions of the employee (see § 1.105-1) are excludable from gross income of the employee to the extent that such amounts do not exceed—

(i) A weekly rate of \$75, during the first 30 calendar days in the period of absence; and

(ii) A weekly rate of \$100, after the first 30 calendar days in the period of absence.

For example, an employee who normally works five days during each week is absent from work for two days, is hospitalized during his absence, and receives \$75 under his employer's wage continuation plan, which amount is at a rate of 75 percent of his "regular weekly rate of wages". The employee cannot exclude

(1) Week of absence	(2) Benefits paid	(3) Regular weekly rate of wages
1—Feb. 3.....	\$40	\$100
2—Feb. 10.....	100	100
2½—Feb. 17.....	160	160
Totals.....	200	260

¹ Three-fifths of 100.

Average percentage of benefits paid— $\frac{200}{260} = 76.92\%$. Accordingly, A would not be permitted any exclusion under section 105(d).

(v) If with respect to any pay period or portion thereof the employee receives amounts under two or more wage continuation plans (whether such plans are maintained by or for the same employers or by different employers), the weekly rate for purposes of section 105(d) shall be the sum of the weekly rates received under all plans. This rule may be illustrated by the following example:

Example. An employee who is absent because of personal injuries or sickness receives \$100 biweekly under wage continuation plan A maintained by his employer. He contributes one-half of the premiums for maintenance of the plan. Under wage continuation plan B maintained by his employer the employee receives \$400 monthly. Plan B is noncontributory. The weekly rate at which benefits are paid for the purpose of section 105(d) is computed as follows:

the entire \$75 under section 105(d), if the weekly rate of such benefits exceeds \$75.

(2) Daily exclusion. An employee receiving payments under a wage continuation plan must, in order to determine the amount of the exclusion under section 105(d), compute the daily rate of the benefits. Such daily rate is determined, for amounts attributable to the first 30 calendar days in the period of absence, by dividing the weekly rate at which benefits are paid (as determined under paragraph (e)(6)(ii) of this section), or the maximum weekly rate at which wage continuation payments are excludable (\$75), whichever is lower, by the number of work days in a normal work week. In the case of amounts attributable to days in a period of absence after the first 30 calendar days, the daily rate for such period is determined by dividing the weekly rate at which benefits are paid (as determined under paragraph (e)(6)(ii) of this section), or the maximum weekly rate at which wage continuation payments are excludable (\$100), whichever is lower, by the number of

work days in a normal work week. The daily rate or daily rates of exclusion are then multiplied by the number of normal work days in the period of absence for which an exclusion is allowable in order to determine the total allowable exclusion. These rules may be illustrated by the following examples:

Example (1). Employee A is a salesman receiving salary and commissions on a weekly basis. His employer maintains a noncontributory wage continuation plan which provides for the continuation of A's basic salary of \$80 per week during periods of absence. A was absent from work on account of sickness from Monday, February 3, 1964, through Sunday, March 15, 1964, but was not hospitalized. His normal work week is from Monday through Friday. The weekly amount of benefits paid to A (\$80) does not exceed 75 percent of his "regular weekly rate of wages" as defined in paragraph (e) (5) of this section. Under section 105(d), the daily rate of exclusion for amounts attributable to the first 30 calendar days in the period of absence, excluding the first 7 days thereof (Monday, February 10, 1964, through Tuesday, March 3, 1964, inclusive) is limited to \$15 (\$75, maximum weekly rate of exclusion divided by 5 (number of normal work days in week)). The daily rate of exclusion for amounts attributable to the period of absence in excess of 30 calendar days (Wednesday, March 4, 1964, through Sunday, March 15, 1964, inclusive) is limited to \$16 (\$80, weekly rate of benefits divided by 5). Thus, the total exclusion permitted to employee A by section 105(d) is \$383.00 (\$15 x 17 work days (\$255) + \$16 x 8 work days (\$128)).

Example (2). Assume the facts in example (1) except that A is paid benefits at

the rate of \$500 a month during periods of absence. The weekly rate of the benefits computed under the rules stated in paragraph (e) (6) (1) of this section is \$115.38, which amount does not exceed 75 percent of his "regular weekly rate of wages" as defined in paragraph (e) (5) of this section. Under section 105(d), the daily rate of exclusion for amounts attributable to the first 30 calendar days in the period of absence, excluding the first 7 days thereof (Monday, February 10, 1964, through Tuesday, March 3, 1964, inclusive) is limited to \$15 (\$75, maximum weekly rate of exclusion divided by 5). The daily rate of exclusion for amounts attributable to the period of absence in excess of 30 calendar days (Wednesday, March 4, 1964, through Sunday, March 15, 1964, inclusive) is limited to \$20 (\$100, maximum weekly rate of exclusion divided by 5). Thus, the total exclusion permitted to employee A by section 105(d) is \$415.00 (\$15 x 17 work days (\$255) + \$20 x 8 work days (\$160)).

Example (3). Employee B, an office worker works five days during each week (Monday through Friday) and receives a salary of \$85 per week. His employer maintains a noncontributory wage continuation plan which provides for no benefits during the first three days of absence, the continuation of full salary for one week thereafter and benefits at the rate of \$65 per week thereafter. B was absent from work on account of sickness from Monday, March 16, 1964, through Tuesday, March 31, 1964, and was hospitalized from Wednesday, March 18, through Tuesday, March 24. B received total benefits of \$137 for the period of absence, which does not exceed 75 percent of his "regular weekly rate of wages" as determined under paragraph (e) (5) of this section. B is permitted an exclusion under section 105(d) of \$127 calculated as follows:

Period of absence	Weekly rate of benefits	Maximum weekly rate of exclusion	Daily rate of exclusion	Days of absence in period	Maximum exclusion
Mar. 16-18	0	\$75	0	3	0
Mar. 19-25	\$85	75	\$15	5	\$75
Mar. 26-31	65	75	13	4	52
Total exclusion					\$127

(g) **Definitions.** The term "personal injury" as used in this section, means an externally caused sudden hurt or damage to the body brought about by an identifiable event. The term "sickness" as used in this section, means mental illnesses and all bodily infirmities and disorders other than "personal injuries". Diseases, whether resulting from the occupation or otherwise, are not considered personal injuries, but they are treated as a sickness.

Par. 4. Section 1.512(b) is amended by adding a new paragraph (14) at the end of section 512(b) and by revising the historical note. Such added and revised provisions read as follows:

§ 1.512(b) Statutory provisions; unrelated taxable income; exceptions, additions, and limitations.

SEC. 512. Unrelated business taxable income. . . .

(b) **Exceptions, additions, and limitations.**

(14) In the case of an organization which is described in section 501(c) (5), there shall be excluded all income used to establish, maintain, or operate a retirement home, hospital, or other similar facility for the exclusive use and benefit of the aged and infirm members of such an organization, which is derived from agricultural pursuits conduct-

ed on a ground contiguous to the retirement home, hospital, or similar facility and further provided that such income does not provide more than 75 percent of the cost of maintaining and operating the retirement home, hospital, or similar facility; and there shall be excluded all deductions directly connected with such income.

[Sec. 512(b) as amended by Act of April 7, 1958 (Pub. Law 85-367, 72 Stat. 80); Act of July 17, 1964 (Pub. Law 88-380, 78 Stat. 333)]

Because the changes contained in paragraph 4 of this Treasury decision merely conform the regulations under section 512(b) to reflect the amendment made by the Act of July 17, 1964 (Public Law 88-380, 78 Stat. 333), and because no substantive rules regarding the application of such amendment are prescribed herein, it is hereby found that it is unnecessary, with respect to such changes, to issue paragraph 4 of this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

(Sec. 7805, Internal Revenue Code of 1954; 68A Stat. 917; 26 U.S.C. 7805)

[F.R. Doc. 64-11622; Filed, Nov. 16, 1964; 8:47 a.m.]

Title 32—NATIONAL DEFENSE

Chapter V—Department of the Army

SUBCHAPTER E—ORGANIZED RESERVES

PART 562—RESERVE OFFICERS' TRAINING CORPS

Miscellaneous Amendments

1. Sections 562.3(c) and 562.4 are revised to read as follows:

§ 562.3 Definitions.

(c) **Major Commander.** The term "major commander" as used in this regulation is limited to:

- (1) Commanding General, Zone of Interior armies.
- (2) Commanding General, United States Army, Alaska.
- (3) Commander, United States Army Forces Southern Command.
- (4) Commanding General, United States Army, Hawaii.
- (5) Commanding General, Antilles Command, United States Army Southern Command.

§ 562.4 Responsibilities.

(a) **Supervision.** (1) The Department of the Army is the agency of the Federal Government charged by law with the:

- (i) Formulation and preparation of plans, policies, regulations, and instructions implementing the statutory provisions pertaining to Army ROTC.
- (ii) Supervision of the execution of pertinent laws relating to the Army ROTC.

(2) The Chief of Staff, U.S. Army, exercises supervision and control over the ROTC program.

(3) The Chief, Office of Reserve Components has the responsibility within the Army staff for general staff supervision and coordination of plans, policies, and programs of the ROTC. He has general staff responsibility for plans, policies, and programs of the ROTC.

(4) The Adjutant General is the administrative agency of the Department of the Army for ROTC matters.

(5) The Commanding General, U.S. Army Materiel Command, is responsible for logistical support of all ROTC activities.

(b) **Commanding General, United States Continental Army Command.** The Commanding General, United States Continental Army Command, is responsible for:

(1) General direction, supervision, inspection, and coordination of matters pertaining to the organization and training of ROTC units except those requiring action by Headquarters, Department of the Army.

(2) Preparation of training literature, including institutional and camp programs of instruction and ROTC manuals.

(3) Observance of unit and summer camp training.

(c) **Major commander.** The major commander commands the operation, training, and administration of the ROTC program within his Army area, in-