

§ 991.601 Conversion factor for lupulin.

For the purpose of converting lupulin, including lupulin sweepings, to an equivalent weight of dried hops, 1 pound of lupulin or lupulin sweepings shall be considered as 6 pounds of dried hops.

It is found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) This action should become effective promptly so that producers who may be eligible and who desire to apply for an additional allotment base may do so in order to benefit therefore during the current marketing year; (2) procedures governing exchange of 1966 crop hops are necessary prior to receipt of 1967 pooled reserve hops; (3) 1967 crop hops are in the process of being harvested and the minimum quality standards should become effective immediately so that they will be applicable to all 1967 crop hops; (4) no additional time is needed to prepare for or to conduct operations under these provisions; and (5) no useful purpose would be served by delaying the effective time hereof.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: September 22, 1967.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable
Division, Consumer and Mar-
keting Service.

[F.R. Doc. 67-11418; Filed, Sept. 27, 1967;
8:50 a.m.]

Title 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration

[Rev. 7, Amdt. 7]

PART 121—SMALL BUSINESS SIZE STANDARDS

Interpretations

Section 121.3-14(c) (3) (ii) of Part 121 of Chapter I of Title 13 of the Code of Federal Regulations is hereby amended by revising § 121.3-14(c) (3) (ii) to read as follows:

§ 121.3-14 Interpretations.

(c) * * *

(3) Control through stock ownership.

(ii) A party is considered to control or have the power to control a concern even though he owns, controls, or has the power to control less than 50 percent of the concern's voting stock if the block of stock he owns, controls or has the power to control is large as compared with any other outstanding block of stock. If two or more parties each own, control or have the power to control less than 50 percent of the voting stock of a concern and such minority blocks are (a) equal or substantially equal in size, and (b) large as compared with any other

block outstanding, there is a presumption that each of such parties controls or has the power to control such concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

Effective date. This amendment shall become effective on publication in the FEDERAL REGISTER.

NOTE: In accordance with section 4(a) of the Administrative Procedure Act, notice of proposed rulemaking is omitted with respect to this amendment because it contains only an interpretive rule.

Dated: September 22, 1967.

ROBERT C. MOOT,
Administrator.

[F.R. Doc. 67-11389; Filed, Sept. 27, 1967;
8:47 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, De- partment of the Treasury

[T.D. 67-225]

PART 1—GENERAL PROVISIONS

Ports of Entry; Laredo, Tex.

SEPTEMBER 21, 1967.

Notice that it was proposed to change the boundaries of the Laredo, Tex., and Houston, Tex., customs districts in Region VI, was published in the FEDERAL REGISTER on June 30, 1967 (32 F.R. 9320). No objections to the proposal were received.

Accordingly, by virtue of the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623 (19 U.S.C. 2), which was delegated to the Secretary of the Treasury by the President in Executive Order No. 10289, September 17, 1951 (3 CFR Ch. II), and pursuant to authorization given to me by Treasury Department Order No. 190, Rev. 4 (30 F.R. 15769), all of that portion of the State of Texas lying north of 34 degrees north latitude is transferred from the Laredo, Tex., district to the Houston, Tex., district (Region VI).

To reflect this change, § 1.2(c) of the Customs Regulations is amended by redefining the geographical area of the Houston, Tex., customs district (Region VI), in the column headed "Area" as follows:

That part of the State of Texas lying north of 34° N. latitude and that part of the State of Texas lying east of 97° W. longitude, except the territory embraced in the Port Arthur and Galveston districts. Also, the counties of Dallas and Tarrant and the State of Oklahoma.

(80 Stat. 379, sec. 1, 37 Stat. 434, sec. 1, 38 Stat. 623, as amended, R.S. 251, sec. 624, 46 Stat. 759; 5 U.S.C. 301, 19 U.S.C. 1, 2, 66, 1624)

This Treasury decision shall become effective 30 days after publication in the FEDERAL REGISTER.

[SEAL] TRUE DAVIS,
Assistant Secretary of the Treasury.

[F.R. Doc. 67-11401; Filed, Sept. 27, 1967;
8:48 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Adminis- tration, Department of Health, Edu- cation, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 120—TOLERANCES AND EX- EMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODI- TIES

Negligible Residues on Commodity- Group Basis

A notice was published in the FEDERAL REGISTER of April 15, 1967 (32 F.R. 6059), proposing that the hereinafter designated crop groupings be used for establishing tolerances for negligible residues. The main point of the comments received in response to the proposal was that the groupings were too detailed and that there should be fewer and larger groupings; however, the differences in usefulness, in conditions of uses, and in residues to be expected do not permit the broadening of the groupings.

The Commissioner of Food and Drugs, having reviewed the comments received and additional representation by the U.S. Department of Agriculture, has concluded that the pesticide regulations should be amended as set forth below. Therefore, by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (secs. 408, 701 (a), 68 Stat. 511, as amended, 52 Stat. 1055; 21 U.S.C. 346a, 371(a)), and delegated to the Commissioner (21 CFR 2.120), Part 120 is amended in the following respects:

1. By revising paragraph (g) of § 120.1 and by adding a new paragraph to that section, as follows:

§ 120.1 Definitions and interpretations.

(g) For the purpose of computing fees as required by § 120.33, each group of crops listed in § 120.34(e) is counted as a single raw agricultural commodity in a petition or request for tolerances or exemption from the requirement of a tolerance for a nonsystemic pesticide. As a general rule, when considering a petition or request with respect to a systemic pesticide (see § 120.34(c)) crops shall not be grouped; however, when computing fees in connection with establishing tolerances for negligible residues, each group listed in § 120.34(f) is counted as a single commodity without regard as to whether or not the pesticide is systemic.

(i) The term "negligible residue" means any amount of a pesticide chemical remaining in or on a raw agricultural commodity or group of raw agricultural commodities that would result in a daily intake regarded as toxicologically insignificant on the basis of scientific judgment of adequate safety data. Ordinarily this will add to the diet an amount which will be less than 1/2,000th

of the amount that has been demonstrated to have no effect from feeding studies on the most sensitive animal species tested. Such toxicity studies shall usually include at least 90-day feeding studies in two species of mammals.

2. By adding to § 120.34 a new paragraph, as follows:

§ 120.34 Tests on the amount of residue remaining.

(f) It may be possible to make a reliable estimate of negligible residues of pesticide chemicals to be expected on each commodity in a designated grouping on the basis of data on a representa-

tive number of commodities listed in the following designated groups. Tolerances for negligible residues will be established on the group as a whole following the certification of usefulness by the Secretary of Agriculture (pursuant to section 408(1) of the act) on the group as a whole. This does not affect U.S. Department of Agriculture requirements for data for registration of labels for each commodity or the requirement for Food and Drug Administration review of these labels and the supporting data for the proposed registration, in accordance with the Interdepartmental Agreement. Commodities not listed are not considered as included in the groupings for the purpose of this paragraph.

Group	Commodities therein
Citrus fruits	Citrus citron, grapefruit, kumquats, lemons, limes, oranges, tangelos, tangerines, and hybrids of these.
Cucurbits	Cantaloupes, casabas, crenshaws, cucumbers, honey balls, honeydew melons, melons, melon hybrids, muskmelons, Persian melons, pumpkins, summer squash, watermelons and their hybrids, winter squash.
Forage grasses	Any grasses (either green or cured) that will be fed to or grazed by livestock, all pasture and range grasses, all grasses grown for hay or silage, corn grown for fodder or silage, sorghum grown for hay or silage, small grains grown for hay, grazing, or silage.
Forage legumes	Any crop belonging to the family Leguminosae that is grown for forage (hay, grazing, silage, etc.), alfalfa, beans (for forage), clovers, cowpeas (for forage), cowpea hay, lespedezas, peanuts (for forage), peanut hay, peas (for forage), pea vine hay, trefoils, velvet beans (for forage), vetch, soybeans (for forage), soybean hay.
Fruiting vegetables	Egg plants, peppers, pimientos, tomatoes.
Grain crops	Any crop belonging to the family Graminae that produces mature seed that are used for food or feed, barley, buckwheat, corn (field corn, sweet corn, and popcorn), milo, oats, rice, rye, sorghums (grain), wheat.
Leafy vegetables	Anise (fresh leaf and stock only), beet greens (tops), broccoli, broccoli raab, brussels sprouts, cabbage, cauliflower, celery, Chinese cabbage, collards, dandelion, endive, escarole, fennel, kale, kohlrabi, lettuce, mustard greens, parsley, rhubarb, salsify tops, spinach, sugar beet tops, Swiss chard, turnip greens (tops), watercress.
Nuts	Almonds, Brazil nuts, bush nuts, butternuts, cashews, chestnuts, filberts, hazelnuts, hickory nuts, macadamia nuts, pecans, walnuts.
Pome fruits	Apples, crabapples, pears, quinces.
Poultry	Chickens, ducks, geese, guinea, pheasant, pigeons, quail, turkeys.
Root crop vegetables	Beets, carrots, chicory, garlic, green onions, horseradish, Jerusalem artichokes, leeks, onions, parsnips, potatoes, radishes, rutabagas, salsify, shallots, spring onions, sugar beets, sweet potatoes, turnips, yams.
Seed and pod vegetables	Black-eyed peas, cowpeas, dill, edible soybeans, field beans, field peas, garden peas, green beans, kidney beans, lima beans, navy beans, okra, peas, pole beans, snap beans, string beans, wax beans, other beans and peas (except dried beans and peas).
Small fruits	Blackberries, blueberries, boysenberries, cranberries, currants, dewberries, elderberries, gooseberries, grapes, huckleberries, loganberries, raspberries.
Stone fruit	Apricots, cherries (sour and sweet), damsons, nectarines, pawpaws, peaches, plums, prunes.
Stored commodities other than fruits, grain, and vegetables	Cottonseed, dried beans (all), dried peas (all), hay, peanuts.
Stored fruits and vegetables	Same crops as specified in this list for cucurbits, fruits, nuts, and vegetables.
Stored grain	Same crops as specified in this list for grain crops.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room

5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with partic-

ularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Secs. 408, 701(a), 68 Stat. 511, as amended, 52 Stat. 1055; 21 U.S.C. 346a, 371(a))

Dated: September 20, 1967.

J. K. KIRK,
Associate Commissioner
for Compliance.

[F.R. Doc. 67-11412; Filed, Sept. 27, 1967;
8:49 a.m.]

PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in the Feed and Drinking Water of Animals or for the Treatment of Food-Producing Animals

Subpart D—Food Additives Permitted in Food for Human Consumption

3,5-DINITROBENZAMIDE

Pursuant to a petition (FAP 671) filed by Salsbury Laboratories, Charles City, Iowa 50616, and upon consideration of other pertinent material, an order was published in the FEDERAL REGISTER of November 19, 1964 (29 F.R. 15511), providing for the safe use of a combination drug containing 3,5-dinitrobenzamide (§ 121.263) and sulfanitran (§ 121.264) in chicken feed as an aid in the prevention of coccidiosis. The regulations were subsequently amended by an order published March 18, 1965 (30 F.R. 3594), to provide for the addition to the combination of 3-nitro-4-hydroxyphenylarsonic acid for growth promotion, feed efficiency, and improving pigmentation.

A petition was filed by Salsbury Laboratories, notice of which was published in the FEDERAL REGISTER of April 22, 1965 (30 F.R. 5717), proposing amendment of the regulations for 3,5-dinitrobenzamide, sulfanitran, and 3-nitro-4-hydroxyphenylarsonic acid to provide for their use with low-level antibiotics added for growth promotion and feed efficiency. On the basis of the data submitted and other relevant material, the Food and Drug Administration concluded that 3,5-dinitrobenzamide is a carcinogen. The data and conclusions were reviewed by an Interdepartmental Technical Panel on Carcinogens, and its findings confirmed the conclusion of the Food and Drug Administration.

A method of analysis has been submitted by Salsbury Laboratories and found to be of adequate sensitivity to establish that under the conditions of use permitted by the orders of November 19, 1964, and March 18, 1965, which include a 5-day withdrawal period, no residues of 3,5-dinitrobenzamide are found in the

edible tissues of treated birds. The petition proposing the use of the additives with low-level antibiotics has been withdrawn by the petitioner. Under these circumstances and pursuant to the provisions of section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act, the Commissioner of Food and Drugs concludes that the food additive regulations should be amended as set forth below to provide the analytical method by which it is determined that no residues of the additive are present in the edible tissues of chickens when the additive is used in accordance with currently authorized conditions of safe use.

Therefore, pursuant to the provisions of the act (secs. 409(c)(3), 701(a), 52 Stat. 1055, 72 Stat. 1786, as amended 76 Stat. 785; 21 U.S.C. 348(c)(3), 371(a)) and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (21 CFR 2.120), Part 121 is amended in the following respects:

§ 121.262 [Amended]

1. In § 121.262(c), table 1 is amended as follows:

a. Item 1.2 is amended in the third column by changing "3,5-Dinitrobenzamide" to read "3,5-Dinitrobenzamide".

b. A footnote is added to table 1 reading "No residues are detected by the method of analysis set forth in § 121.263 (e)."

2. Section 121.263 is amended by adding thereto two new paragraphs, as follows:

§ 121.263 3,5-Dinitrobenzamide.

(d) No residue of 3,5-dinitrobenzamide shall be present in any edible portion of such animal after slaughter as determined by the method of analysis set forth in paragraph (e) of this section.

(e) The method of analysis establishing the absence of residues of the additive in edible portions of treated animals is as follows:

1. *Method of analysis—3,5-dinitrobenzamide.* A method for 3,5-dinitrobenzamide (3,5-DNBA) in chicken tissues is described with a cleanup step that removes most of the interfering materials, thus allowing uncompensated measurements to be read. The 3,5-DNBA is extracted from the sample with acetone and chloroform and prepared for chromatography by removing the aqueous phase in a separatory funnel and the solvents in a flash evaporator. The extract residue is chromatographed on alumina to remove several lipid components and residues of other drugs. The benzamide eluate is passed through a column of Dowex-50 resin, or equivalent, to remove arylamines; for example, 3-amino-5-nitrobenzamide. The 3,5-DNBA fraction is reduced, after removal of alcohol, with TiCl_3 in basic solution to an arylamine, presumably 3,5-diaminobenzamide. The reduced fraction is placed on another Dowex-50 column, most of the interfering substances are removed with washings of alcohol and water, and the arylamine residue is eluted with 4N HCl. Colorimetric measurement is made in a 100-millimeter cell at 530 millimicrons after reacting the residue with Bratton-Marshall reagents.

II. Reagents. A. Acetone.

B. Acetyl-(p-nitrophenyl)-sulfanilamide (APNPS) standard—melting point range 264°

C.-267° C. Weigh and transfer 10 milligrams of APNPS to a 100-milliliter flask, dissolve and dilute to volume with acetone.

C. Alumina—activated F-20, 80-200 mesh, Aluminum Co. of America, or equivalent substance.

D. Ammonium sulfamate.

E. Ammonium sulfamate solution—1.25 grams of ammonium sulfamate per 100 milliliters of water. Refrigerate when not in use. Prepare fresh weekly.

F. Cation-exchange resin—Dowex 50W-X8, 200-400 mesh, Baker Analyzed Reagent, or equivalent, prepared as follows:

1. Place 500 grams of resin into a 3-liter beaker.

2. Add 2,000 milligrams of 6N HCl.

3. Heat and stir while on a bath at 80° C. for 6 hours. Discontinue heating and continue stirring overnight.

4. Filter the resin on a Buchner funnel (24 cm.) fitted with Whatman No. 1 paper.

5. Wash the resin bed with four 500-milliliter portions of 6N HCl.

6. Wash the resin bed with 500-milliliter portions of deionized water until the effluent has a pH of 5 or higher.

7. Wash the resin bed with three 400-milliliter portions of specially denatured alcohol 3A. Drain thoroughly.

8. Make a slurry of resin in 1,250 milliliters of specially denatured alcohol 3A.

G. Chloroform.

H. Coupling reagent—0.25 gram of N-1-naphthyl-ethylenediamine dihydrochloride per 100 milliliters of water. Refrigerate when not in use. Prepare fresh weekly.

I. 3,5-Dinitrobenzamide (3,5-DNBA standard). Add to boiling specially denatured alcohol 3A until a saturated solution is obtained and treat with activated carbon, filtered and crystallize by cooling to room temperature. The 3,5-DNBA therefrom is treated a second time with activated carbon and then recrystallized three more times from specially denatured alcohol 3A. The third crystallization is washed with diethyl ether and dried in a vacuum desiccator, melting point range 185° C.-186° C.

J. Ethyl alcohol—absolute, A.C.S.

K. Eluting reagent A. The formula and volume required in procedure step V-D is dependent on the adsorptive strength of the Al_2O_3 . For each lot of Al_2O_3 , make the following test:

1. Prepare a column (see procedure step V-D for determining formula and volume of eluting reagent A).

2. Transfer 1 milliliter of APNPS standard (100 micrograms per milliliter) in 75 milliliters of chloroform to the column.

3. Wash the column with 100 milliliters of chloroform and discard the eluate.

4. Pass through 100 milliliters of solution consisting of specially denatured alcohol 3A and ethyl alcohol 1:1 (volume to volume). Collect one 50-milliliter and five 10-milliliter portions; these make up the first, second, third, fourth, fifth, and sixth portions of eluate.

5. Place in beakers under a stream of air on a water bath (90° C.) until the solvents are evaporated.

6. Add 10 milliliters of 4N HCl to each, cover with watch glasses and heat (90° C.) for 30 minutes; cool to room temperature.

7. Add the Bratton-Marshall reagents.

8. All fractions show a slight color. Note the portion containing the first significant increase in pink color.

a. If the color increases in the second, third, or fourth portions of eluate, the formula in procedure step V-D is suitable and, depending on the portion, 45, 55, or 65 milliliters, respectively, should be used in procedure step V-D4. Thereby, the APNPS is retained on the column and the benzamides are eluted.

b. If the color increases in the first portion, the eluting strength of the reagent is too strong. Return the test, substituting 1:4 (volume to volume) in procedure step V-D4. If 1:4 (volume to volume) is too strong, rerun with ethyl alcohol in procedure step V-D. If none of these are suitable, another lot of Al_2O_3 should be used.

c. If the color increases in the fifth or sixth portion, the eluting strength of the reagent is too weak. Rerun the test, substituting in procedure step V-D4, respectively, 4:1 (volume to volume), specially denatured alcohol 3A; methyl alcohol, 4:1 (volume to volume), until a suitable formula is found. If none of these are suitable, another lot of Al_2O_3 should be used.

L. Hydrochloric acid, 4N. Add two volumes of water to one volume of HCl.

M. Diatomaceous earth—Hyflo Super Cel, Johns-Manville Co., or equivalent substance.

N. N-1-Naphthylethylenediamine dihydrochloride.

O. Sodium hydroxide solution, 10N. Dissolve 100 grams of sodium hydroxide in water and dilute to 25 milliliters.

P. Sodium nitrite solution—0.25 grams of sodium nitrite per 100 milliliters of water. Refrigerate when not in use. Prepare fresh weekly.

Q. Specially denatured alcohol, formula 3A—100 parts of 190-proof ethyl alcohol plus 5 parts of commercial methyl alcohol.

R. Titanium(ous) chloride—20 percent solution.

III. Special apparatus. A. Absorption cells—Beckman No. 75195 matched set of two cylindrical silica cells with 100-millimeter optical length, or equivalent cells.

B. Autotransformer—type 500B, or equivalent. To regulate speed of mixer.

C. Centrifuge.

D. Centrifuge tubes—50-milliliter size with glass stopper.

E. Chromatography tubes—Corning No. 38460, 20 millimeters x 400 millimeters and having a tapered 29/42 joint with coarse, fritted disc, or equivalent tubes.

F. Evaporator—vacuum, rotary, thin film.

G. Ion-exchange column—as described by Thiels et al. in "Determination of 3-amino-5-nitro-o-toluidine (ANOT) in chicken tissues" published in "Journal of Agricultural and Food Chemistry," volume 9, pages 201-204 (1961).

H. Glycerol manostat. For regulating pressure on columns: To Al_2O_3 columns, 15-inch head pressure; to ion-exchange columns, 30-inch head pressure.

I. Motor speed control. For regulating speed on 1-quart blender.

J. Volumetric flasks—50 milliliter size, actinic ware.

K. Mixer—Vortex Jr. Model K-500-1, Scientific Industries, Inc., or equivalent mixer.

L. One-quart blender.

M. Water bath (45° C.-50° C.).

N. Water bath (90° C.).

IV. Standard curve. A. 1. Weigh 100 milligrams of 3,5-DNBA and transfer to a 1-liter volumetric flask with acetone.

2. Dissolve and dilute with acetone to volume.

3. Dilute 1 milliliter to 100 milliliters.

4. Add 5.0 milliliters of water to each of six centrifuge tubes.

5. Add standard to each of the tubes to contain one of the following amounts: 0.0, 1.0, 2.0, 3.0, 5.0, and 10.0 micrograms of 3,5-DNBA.

B. Prepare each tube for colorimetric measurement as follows:

1. Place the tube in a hot water bath (90° C.) until 5.0 milliliters remain. Cool to room temperature.

2. While mixing on Vortex mixer, or equivalent, regulated with an autotransformer, add 2 drops of TiCl_3 and 4 drops of 10N NaOH. Continue mixing until chalky-white in appearance.

3. Add 2 milliliters of HCl, mix, and allow to stand for 5 minutes.

4. Transfer to 50-milliliter volumetric flask and dilute with 4N HCl to 40-45 milliliters.

5. Cool to 0° C.-5° C. by placing in a freezer or ice bath.

6. Perform the Bratton-Marshall reaction in subdued light as follows:

a. Add 1 milliliter of sodium nitrite reagent, mix, and allow to stand for 1 minute.

b. Add 1 milliliter of ammonium sulfamate reagent, mix, and allow to stand for 1 minute.

c. Add 1 milliliter of coupling reagent, mix, and allow to stand for 10 minutes.

d. Dilute to volume with 4N HCl.

C. Perform colorimetric measurement at 530 millimicrons as follows:

1. Fill two matched 100-millimeter cells with 4N HCl and place into spectrophotometer.

2. Adjust dark current.

3. Adjust to zero absorbance.

4. Replace acid in cell of sample side of compartment with standard to be measured.

5. The standard curve should be run five different times. Plot equivalent concentration in tissue versus mean absorbance at each concentration. If computer is available, a better procedure is to calculate the equation of the standard curve by means of least squares.

V. Procedure. A. Extraction. 1. Mince 350 grams of tissue in a 1-quart blending jar for 3 minutes. Use samples obtained from either freshly killed or quickly frozen birds. The latter should be analyzed as soon as thawed. For fibrous meats (for example, muscle, skin) put through a meat grinder before mincing.

2. Weigh 100±0.5 grams of each replicate sample in a 150-milliliter beaker. Analyze each sample in triplicate and average the results. Reproducibility of ±10 percent between such analyses has been obtained.

3. Transfer the sample to a 1-quart blender jar. For kidney and liver tissues, make a slurry with acetone in the weighing beaker. Transfer with several rinses of acetone.

4. Blend the sample for 5 minutes with 250 milliliters of acetone and a 100-milliliter beakerful of diatomaceous earth.

5. Filter through a Buchner funnel containing a wetted Whatman No. 5 filter paper (12.5 cm.) into a 1-liter suction flask.

6. Rinse the blender jar into the funnel with three 25-milliliter portions of acetone.

7. Transfer the pulp and paper from the funnel to the aforementioned blender jar.

8. Add 250 milliliters of chloroform.

9. Blend for 3 minutes.

10. Filter through the aforementioned apparatus of procedure step V-A5. For rapid filtration of skin and blood samples, prepare funnel by adding diatomaceous earth and tamping evenly over paper to a thickness of 3 to 5 millimeters.

11. Rinse the blender jar into the funnel with three 25-milliliter rinses of chloroform.

B. Phase separation. 1. Pour the combined filtrates into a 1-liter separatory funnel.

2. Rinse the suction flask twice with 25 milliliters of chloroform.

3. Mix the funnel contents by gently rocking and swirling for 30 seconds.

4. Let stand 10 minutes to allow phases to separate.

a. The upper (aqueous) phase (30 to 50 milliliters) is not always emulsion-free. Losses from emulsions have not been significant.

b. If an upper (aqueous) phase does not appear, add an additional 100 milliliters of chloroform and 10 milliliters of water and repeat procedure step V-B3.

5. Withdraw the lower phase into a 1-liter round-bottom flask, and discard upper phase. Withdraw nearly all of the lower phase, let stand for 2 to 3 minutes, then withdraw the remainder.

C. Evaporation. Attach the flask on a thin-film rotary evaporator connected to a vacuum supply, and place in a water bath maintained at 45° C.-50° C. until an oily residue remains. Do not overheat the sample or allow to go to dryness.

D. Adsorption chromatography. 1. Prepare a chromatography column using a column with calibrated etchings to indicate appropriate adsorbent and solvent levels as follows:

a. Fill tube to a depth of 60 millimeters with Al_2O_3 .

b. Tap walls gently with hands.

c. Add anhydrous sodium sulfate to an additional depth of 25 millimeters.

d. Wet and wash column with 50 milliliters of chloroform.

1. During chromatography, make each addition to the tube when the liquid level has reached the top of the sodium sulfate layer.

11. Increase the percolation rates by applying a slight air pressure to the top of the column.

2. Transfer the residue from procedure step V-C to the column with four 15-milliliter rinses of chloroform. Then rinse the walls of the tube and sodium sulfate layer with three 5-milliliter portions of chloroform. Percolation rate: 15 to 25 milliliters per minute. No color from sample should be seen in sodium sulfate layer after final rinse.

3. Wash column with 100 milliliters of chloroform. Discard eluate.

4. Add 75 milliliters of eluting reagent A and collect eluate A in a 250-milliliter beaker for cation-exchange chromatography.

a. Refer to "Eluting reagent A" under "Reagents" (II-K) for determining formula and volume.

b. Percolation rate: 8 to 12 milliliters per minute.

E. Cation-exchange chromatography—No. 1.

1. Prepare an ion-exchange column as follows:

a. Add a uniform slurry of resin to the column to obtain a 4 to 5 centimeter bed depth after settling.

1. Obtain a uniform slurry using a magnetic stirrer. To add the required amount of resin, calibrate the slurry and transfer it with a 10-milliliter pipette to deliver a reproducible volume.

11. Increase the flow rate to 2 to 4 milliliters per minute by applying air pressure to the column. A glycerol manostat adjusted to 30 inches and attached between an air supply and column provides adequate pressure.

b. Wash the resin with 10 milliliters of eluting reagent A. Discard eluate.

2. Pass eluate A from procedure step V-D4 through the column. Collect in a 250-milliliter beaker.

3. Pass 50 milliliters of specially denatured alcohol 3A through the column. Combine with the eluate of procedure step V-E2.

P. Reduction. 1. Place the eluate A fraction from procedure step V-E3 on a hot water bath (90° C.) and evaporate with a stream of air until 5 to 10 milliliters remain. Do not overheat the sample or allow the sample to go to dryness.

2. Transfer to centrifuge tube and rinse beaker three times with 3 milliliters of specially denatured alcohol 3A.

3. Evaporate on a hot water bath (90° C.) under a stream of air until alcohol has evaporated. Do not overheat the sample or allow the sample to go to dryness.

4. Remove the tube from the water bath and immediately add 5.0 milliliters of water.

5. While mixing, add 2 drops of titanium chloride and 4 drops of 10N sodium hydroxide. Continue mixing until greyish color disappears.

a. Mix on Vortex Jr. mixer, or equivalent, regulated with autotransformer.

b. Precipitate of insoluble tissue substances and white titanium salts is present after reduction is complete.

6. Dilute to 50 milliliters with specially denatured alcohol 3A and mix.

7. Centrifuge for 5 minutes at 2,000 r.p.m.

G. Cation-exchange chromatography—No. 2.

1. Prepare resin column by procedure step V-E.

2. Pass the centrifugate of procedure step V-F7 through column. Use three rinses of specially denatured alcohol 3A, each 5 milliliters, to aid in transferring of sample.

3. Pass 50 milliliters of specially denatured alcohol 3A through the column.

4. Pass 50 milliliters of deionized water through the column.

5. Elute arylamine residue from the resin with 40 to 43 milliliters of 4N HCl into a 50-milliliter volumetric flask (acidic ware) for 3,5-DNBA analysis. Avoid direct sunlight. The arylamine has been found to be photosensitive.

H. Color development and measurement. 1. Cool to 0° C.-5° C. by placing in a freezer or ice bath.

2. Perform the Bratton-Marshall reaction in subdued light as follows:

a. Add 1 milliliter of sodium nitrite reagent, mix, and allow to stand for 1 minute.

b. Add 1 milliliter of ammonium sulfamate reagent, mix, and allow to stand for 1 minute.

c. Add 1 milliliter of coupling reagent, mix, and allow to stand for 10 minutes.

d. Dilute to volume with 4N HCl.

3. Perform colorimetric measurement at 530 millimicrons as follows:

a. Fill two matched 100-millimeter cells with 4N HCl and place into instrument.

b. Adjust dark current.

c. Adjust to zero absorbance.

d. Replace acid in cell of sample side of compartment with sample to be measured.

e. Record absorbance observed.

f. Calculations. Determine parts per billion (observed) from the standard curve.

§ 121.264 [Amended]

3. In § 121.264 *Sulfanilic acid* (acetyl-(p-nitrophenyl)-sulfanilamide), table 1 in paragraph (c) is amended as follows:

a. Items 1.2 and 1.4 are amended in the third column by changing "3,5-Dinitrobenzamide" to read "3,5-Dinitrobenzamide".

b. A footnote is added to table 1 reading: "No residues are detected by the method of analysis set forth in § 121.263 (e)."

4. Section 121.1168 is amended by designating the existing text as paragraph (a) and by adding a new paragraph (b).

As amended, the section reads as follows:

§ 121.1168 3,5-Dinitrobenzamide.

(a) A tolerance of zero is established for residues of 3,5-dinitrobenzamide and its metabolites in the edible tissues and byproducts of chickens.

(b) The method of analysis by which it is determined that no residues of 3,5-dinitrobenzamide are present in tissues and byproducts of chickens is set forth in § 121.263 (e).

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity

the provisions of the order seemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Secs. 409(c) (3), 701(a), 52 Stat. 1055, 72 Stat. 1786, as amended 76 Stat. 785; 21 U.S.C. 348(c) (3), 371(a))

Dated: September 20, 1967.

J. K. KIRK,
Associate Commissioner
for Compliance.

[F.R. Doc. 67-11411; Filed, Sept. 27, 1967;
8:49 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 531—WAGE PAYMENTS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

On January 10, 1967, notice of proposed rulemaking regarding a revision of 29 CFR Part 531 was published in the FEDERAL REGISTER (32 F.R. 222). After consideration of all responsive matter presented, the revision as proposed is hereby adopted, subject to the following changes:

1. Section 531.7(b) is changed.
2. Section 531.32(c) is changed.
3. A cross-reference is added at the end of § 531.35.
4. Section 531.55 is changed.
5. A new § 531.56(e) is added.
6. In § 531.57, punctuation and the words "seasonal fluctuations" are added to the concluding phrase.
7. In §§ 531.55 and 531.59 the word "credited" is substituted for the words "accounted for".
8. Typographical changes are made.

Effective date. This revision shall become effective 30 days after this document is published in the FEDERAL REGISTER. The policy expressed in the proposal of January 10, 1967, is here repeated and reaffirmed, however, that for the period prior to such effective date no enforcement action will be taken against any employer because he has taken such credit for tips as wage payments due under the Act as he would be entitled to take if that proposal were in full force and effect, even if such credit is not authorized under the amended Act and 29 CFR Part 531 as presently in effect.

Signed at Washington, D.C., this 22d day of September 1967.

CLARENCE T. LINDQUIST,
Administrator, Wage and Hour
and Public Contracts Divisions,
U.S. Department of Labor.

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531.56 "More than \$20 a month in tips."
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531.59 The tip wage credit.
531.60 Overtime payments.

AUTHORITY: The provisions of this Part 531 issued under sec. 3(m), 52 Stat. 1060; sec. 2, 75 Stat. 65; sec. 101, 80 Stat. 830; 29 U.S.C. 203 (m) and (t).

Subpart A—Preliminary Matters

§ 531.1 Definitions.

(a) "Administrator" means the Administrator of the Wage and Hour and Public Contracts Divisions or his authorized representative. The Secretary of Labor has delegated to the Administrator the functions vested in him under section 3(m) of the Act.

(b) "Act" means the Fair Labor Standards Act of 1938, as amended.

§ 531.2 Purpose and scope.

(a) Section 3(m) of the Act defines the term "wage" to include the "reasonable cost", as determined by the Secretary of Labor, to an employer of furnishing any employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by the employer to his employees. In addition, section 3(m) gives the Secretary authority to determine the "fair value" of such facilities on the basis of average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of "fair value." Whenever so determined and when applicable and pertinent, the "fair value" of the facilities involved shall be includable as part of "wages" instead of the actual measure of the costs of those facilities. The section provides, however, that the cost of board, lodging, or other facilities shall not be included as part of "wages" if excluded therefrom by a bona fide collective bargaining agreement. Section 3(m) also provides a method for determining the wage of a tipped employee.

(b) This Part 531 contains any determinations made as to the "reasonable cost" and "fair value" of board, lodging, or other facilities having general application, and describes the procedure whereby determinations having general or particular application may be made. The part also interprets generally the provisions of section 3(m) of the Act, including the term "tipped employee" as defined in section 3(t).

Subpart B—Determinations of "Reasonable Cost" and "Fair Value"; Effects of Collective Bargaining Agreements

§ 531.3 General determinations of "reasonable cost".

(a) The term "reasonable cost" as used in section 3(m) of the Act is hereby determined to be not more than the actual cost to the employer of the board, lodging, or other facilities customarily furnished by him to his employees.

(b) "Reasonable cost" does not include a profit to the employer or to any affiliate person.

(c) Except whenever any determination made under § 531.4 is applicable, the "reasonable cost" to the employer of furnishing the employee with board, lodging, or other facilities (including housing) is the cost of operation and maintenance including adequate depreciation plus a reasonable allowance (not more than 5½ percent) for interest on the depreciated amount of capital invested by the employer: *Provided*, That if the total so computed is more than the fair rental value (or the fair price of the commodities or facilities offered for sale), the fair rental value (or the fair price of the commodities or facilities offered for sale) shall be the reasonable cost. The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be those arrived at under

good accounting practices. As used in this paragraph, the term "good accounting practices" does not include accounting practices which have been rejected by the Internal Revenue Service for tax purposes, and the term "depreciation" includes obsolescence.

(d) (1) The cost of furnishing "facilities" found by the Administrator to be primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages.

(2) The following is a list of facilities found by the Administrator to be primarily for the benefit or convenience of the employer. The list is intended to be illustrative rather than exclusive: (i) Tools of the trade and other materials and services incidental to carrying on the employer's business; (ii) the cost of any construction by and for the employer; (iii) the cost of uniforms and of their laundering, where the nature of the business requires the employee to wear a uniform.

§ 531.4 Making determinations of "reasonable cost".

(a) *Procedure.* Upon his own motion or upon the petition of any interested person, the Administrator may determine generally or particularly the "reasonable cost" to an employer of furnishing any employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by the employer to his employees. Notice of proposed determination shall be published in the *FEDERAL REGISTER*, and interested persons shall be afforded an opportunity to participate through submission of written data, views, or arguments. Such notice shall indicate whether or not an opportunity will be afforded to make oral presentations. Whenever the latter opportunity is afforded, the notice shall specify the time and place of any hearing and the rules governing such proceedings. Consideration shall be given to all relevant matter presented in the adoption of any rule.

(b) *Contents of petitions submitted by interested persons.* Any petition by an employee or an authorized representative of employees, an employer or group of employers, or other interested persons for a determination of "reasonable cost" shall include the following information:

(1) The name and location of the employer's or employers' place or places of business;

(2) A detailed description of the board, lodging, or other facilities furnished by the employer or employers, whether or not these facilities are customarily furnished by the employer or employers, and whether or not they are alleged to constitute "wages";

(3) The charges or deductions made for the facility or facilities by the employer or employers;

(4) When the actual cost of the facility or facilities is known an itemized statement of such cost to the employer or employers of the furnished facility or facilities;

(5) The cash wages paid;

(6) The reason or reasons for which the determination is requested, including any reason or reasons why the determinations in § 531.3 should not apply; and

(7) Whether an opportunity to make an oral presentation is requested; and if it is requested, the inclusion of a summary of any expected presentation.

§ 531.5 Making determinations of "fair value".

(a) *Procedure.* The procedures governing the making of determinations of the "fair value" of board, lodging, or other facilities for defined classes of employees and in defined areas under section 3(m) of the Act shall be the same as that prescribed in § 531.4 with respect to determinations of "reasonable cost."

(b) *Petitions of interested persons.* Any petition by an employee or an authorized representative of employees, an employer or group of employers, or other interested persons for a determination of "fair value" under section 3(m) of the Act shall contain the information required under paragraph (b) of § 531.4, and in addition, to the extent possible, the following:

(1) A proposed definition of the class or classes of employees involved;

(2) A proposed definition of the area to which any requested determination would apply;

(3) Any measure of "fair value" of the furnished facilities which may be appropriate in addition to the cost of such facilities.

§ 531.6 Effects of collective bargaining agreements.

(a) The cost of board, lodging, or other facilities shall not be included as part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective bargaining agreement applicable to the particular employee.

(b) A collective bargaining agreement shall be deemed to be "bona fide" when it is made with a labor organization which has been certified pursuant to the provision of section 7(b)(1) or 7(b)(2) of the Act by the National Labor Relations Board, or which is the certified representative of the employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended.

(c) Collective bargaining agreements made with representatives who have not been so certified will be ruled on individually upon submission to the Administrator.

§ 531.7 Request for review of tip credit.

(a) Any employee (either himself or acting through his representative) may request the Administrator to determine whether the actual amount of tips received by him is less than the amount determined by the employer as a wage credit. If it is shown to the satisfaction of the Administrator that the actual amount of tips is the lesser of these amounts, the amount paid the employee

by the employer shall be deemed to have been increased by such lesser amount.

(b) Requests for review and determination may be made either orally or in writing to any investigator or any regional, district, or field office of the Wage and Hour and Public Contracts Divisions or to the Administrator in Washington, D.C. 20210. Requests should be accompanied by a statement of tips received each week or each month over a representative period as reported by the employee to the employer for purposes of Internal Revenue Service reports. Such a request should also be accompanied by a statement showing the tip credit taken by the employer and any other information deemed pertinent by the petitioner. In any instance in which it appears that the tip credit claimed by the employer exceeds the amount of tips actually received by the tipped employee, the employer shall be apprised of the facts made available to the Wage and Hour and Public Contracts Divisions and be afforded the opportunity to submit any evidence he may care to present in support of his claim for tip credit before a determination is made. Such determination shall be made by the official representative of the Wage and Hour and Public Contracts Divisions assigned to make an investigation of the employing establishment.

§ 531.8 Petitions to issue, amend, or repeal rules, including determinations, under this part.

Any interested person may petition for the issuance, amendment, or repeal of rules, including determinations under this part. Any such petition shall be directed in writing to the Administrator. Any such petition shall include: (a) A declaration of the petitioner's interest in the proposed action; (b) a statement of the rule-making action sought; and (c) any data available in support of the petition. Whenever a petitioner seeks a determination of "reasonable cost" or "fair value" the statement of rule-making sought shall contain the information required under § 531.4(b) or § 531.5(b), as the case may be.

Subpart C—Interpretations

§ 531.25 Introductory statement.

(a) The ultimate decisions on interpretations of the Act are made by the courts (*Mitchell v. Zachry*, 362 U.S. 310; *Kirschbaum v. Walling*, 316 U.S. 517). Court decisions supporting interpretations contained in this subpart are cited where it is believed they may be helpful. On matters which have not been determined by the courts, it is necessary for the Secretary of Labor and the Administrator to reach conclusions as to the meaning and the application of provisions of the law in order to carry out their responsibilities of administration and enforcement (*Skidmore v. Swift*, 323 U.S. 134). In order that these positions may be made known to persons who may be affected by them, official interpretations are issued by the Administrator on the advice of the Solicitor of

Labor, as authorized by the Secretary (Reorganization Plan 6 of 1950, 64 Stat. 1263; Gen. Order 45A, May 24, 1950, 15 F.R. 3290). The Supreme Court has recognized that such interpretations of this Act "provide a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it" and "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." Further, as stated by the Court: "Good administration of the Act and good judicial administration alike require that the standards of public enforcement and those for determining private rights shall be at variance only where justified by very good reasons." (*Skidmore v. Swift*, 323 U.S. 134.)

(b) The interpretations of the law contained in this subpart are official interpretations of the Department of Labor with respect to the application under described circumstances of the provisions of law which they discuss. The interpretations indicate, with respect to the methods of paying the compensation required by sections 6 and 7 and the application thereto of the provisions of section 3(m) of the Act, the construction of the law which the Secretary of Labor and the Administrator believe to be correct and which will guide them in the performance of their administrative duties under the Act unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon reexamination of an interpretation, that it is incorrect. Reliance may be placed upon the interpretations as provided in section 10 of the Portal-to-Portal Act (29 U.S.C. 259) so long as they remain effective and are not modified, amended, rescinded, or determined by judicial authority to be incorrect. For discussion of section 10 of the Portal-to-Portal Act, see Part 790 of this chapter.

§ 531.26 Relation to other laws.

Various Federal, State, and local legislation requires the payment of wages in cash; prohibits or regulates the issuance of scrip, tokens, credit cards, "dope checks" or coupons; prevents or restricts payment of wages in services or facilities; controls company stores and commissaries; outlaws "kickbacks"; restrains assignment and garnishment of wages; and generally governs the calculation of wages and the frequency and manner of paying them. Where such legislation is applicable and does not contravene the requirements of the Act, nothing in the Act, the regulations, or the interpretations announced by the Administrator should be taken to override or nullify the provisions of these laws.

How PAYMENTS MAY BE MADE

§ 531.27 Payment in cash or its equivalent required.

(a) Standing alone, sections 6 and 7 of the Act require payment of the prescribed wages, including overtime compensation, in cash or negotiable instrument payable at par. Section 3(m) provides, however, for the inclusion in the

"wage" paid to any employee, under the conditions which it prescribes, of the "reasonable cost," or "fair value" as determined by the Secretary, of furnishing such employee with board, lodging, or other facilities. In addition, section 3(m) provides that a tipped employee's wages may consist in part of tips. It is section 3(m) which permits and governs the payment of wages in other than cash.

(b) It should not be assumed that because the term "wage" does not appear in section 7, all overtime compensation must be paid in cash and may not be paid in board, lodging, or other facilities. There appears to be no evidence in either the statute or its legislative history which demonstrates the intention to provide one rule for the payment of the minimum wage and another rule for the payment of overtime compensation. The principles stated in paragraph (a) of this section are considered equally applicable to payment of the minimum hourly wage required by section 6 or of the wages required by the equal pay provisions of section 6(d), and to payment, when overtime is worked, of the compensation required by section 7. Thus, in determining whether he has met the minimum wage and overtime requirements of the Act, the employer may credit himself with the reasonable cost to himself of board, lodging, or other facilities customarily furnished by him to his employees when the cost of such board, lodging, or other facilities is not excluded from wages paid to such employees under the term of a bona fide collective bargaining agreement applicable to the employees. Unless the context clearly indicates otherwise, the term "wage" is used in this part to designate the amount due under either section 6 or section 7 without distinction. It should be remembered, however, that the wage paid for a job, within the meaning of the equal pay provisions of section 6(d), may include remuneration for employment which is not included in the employee's regular rate of pay under section 7(e) of the act or is not allocable to compensation for hours of work required by the minimum wage provisions of section 6. Reference should be made to Parts 778 and 800 of this chapter for a more detailed discussion of the applicable principles.

(c) Tips may be credited or offset against the wages payable under the Act in certain circumstances, as discussed later in this subpart. See also the recordkeeping requirements contained in Part 516 of this chapter.

§ 531.28 Restrictions applicable where payment is not in cash or its equivalent.

It appears to have been the clear intention of Congress to protect the basic minimum wage and overtime compensation required to be paid to the employee by sections 6 and 7 of the Act from profiteering or manipulation by the employer in dealings with the employee. Section 3(m) of the Act and Subpart B of this part accordingly prescribe certain limitations and safeguards which control the payment of wages in other

than cash or its equivalent. (Special recordkeeping requirements must also be met. These are contained in Part 516 of this chapter.) These provisions, it should be emphasized, do not prohibit payment of wages in facilities furnished either as additions to a stipulated wage or as items for which deductions from the stipulated wage will be made; they prohibit only the use of such a medium of payment to avoid the obligation imposed by sections 6 and 7.

§ 531.29 Board, lodging, or other facilities.

Section 3(m) applies to both of the following situations: (a) Where board, lodging, or other facilities are furnished in addition to a stipulated wage; and (b) where charges for board, lodging, or other facilities are deducted from a stipulated wage. The use of the word "furnishing" and the legislative history of section 3(m) clearly indicate that this section was intended to apply to all facilities furnished by the employer as compensation to the employee, regardless of whether the employer calculates charges for such facilities as additions to or deductions from wages.

§ 531.30 "Furnished" to the employee.

The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only where customarily "furnished" to the employee. Not only must the employee receive the benefits of the facility for which he is charged, but it is essential that his acceptance of the facility be voluntary and uncoerced. See *Williams v. Atlantic Coast Line Railroad Co.* (E.D.N.C.), 1 W.H. Cases 289.

§ 531.31 "Customarily" furnished.

The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only where "customarily" furnished to the employee. Where such facilities are "furnished" to the employee, it will be considered a sufficient satisfaction of this requirement if the facilities are furnished regularly by the employer to his employees or if the same or similar facilities are customarily furnished by other employees engaged in the same or similar trade, business, or occupation in the same or similar communities. See *Walling v. Alaska Pacific Consolidated Mining Co.*, 152 F. (2d) 812 (C.A. 9), cert. denied, 327 U.S. 803; *Southern Pacific Co. v. Joint Council* (C.A. 9) 7 W.H. Cases 536. Facilities furnished in violation of any Federal, State, or local law, ordinance or prohibition will not be considered facilities "customarily" furnished.

§ 531.32 "Other facilities".

(a) "Other facilities," as used in this section, must be something like board or lodging. The following items have been deemed to be within the meaning of the term: Meals furnished at company restaurants or cafeterias or by hospitals, hotels, or restaurants to their employees;

meals, dormitory rooms, and tuition furnished by a college to its student employees; housing furnished for dwelling purposes; general merchandise furnished at company stores and commissaries (including articles of food, clothing, and household effects); fuel (including coal, kerosene, firewood, and lumber slabs), electricity, water, and gas furnished for the noncommercial personal use of the employee; transportation furnished employees between their homes and work where the travel time does not constitute hours worked compensable under the Act and the transportation is not an incident of and necessary to the employment.

(b) Shares of capital stock in an employer company, representing only a contingent proprietary right to participate in profits and losses or in the assets of the company at some future dissolution date, do not appear to be "facilities" within the meaning of the section.

(c) It should also be noted that under § 531.3(d)(1), the cost of furnishing "facilities" which are primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages. Items in addition to those set forth in § 531.3 which have been held to be primarily for the benefit or convenience of the employer and are not therefore to be considered "facilities" within the meaning of section 3(m) include: Safety caps, explosives, and miners' lamps (in the mining industry); electric power (used for commercial production in the interest of the employer); company police and guard protection; taxes and insurance on the employer's buildings which are not used for lodgings furnished to the employee; "dues" to chambers of commerce and other organizations used, for example to repay subsidies given to the employer to locate his factory in a particular community; transportation charges where such transportation is an incident of and necessary to the employment (as in the case of maintenance-of-way employees of a railroad); charges for rental of uniforms where the nature of the business requires the employee to wear a uniform; medical services and hospitalization which the employer is bound to furnish under workmen's compensation acts, or similar Federal, State, or local law. On the other hand, meals are always regarded as primarily for the benefit and convenience of the employee. For a discussion of reimbursement for expenses, such as "supper money," "travel expenses," etc., see § 778.217 of this chapter.

§ 531.33 "Reasonable cost"; "fair value".

(a) Section 3(m) directs the Administrator to determine "the reasonable cost . . . to the employer of furnishing . . . facilities" to the employee, and in addition it authorizes him to determine "the fair value" of such facilities for defined classes of employees and in defined areas, which may be used in lieu of the actual measure of the cost of

such facilities in ascertaining the "wages" paid to any employee. Subpart B contains three methods whereby an employer may ascertain whether any furnished facilities are a part of "wages" within the meaning of section 3(m): (1) An employer may calculate the "reasonable cost" of facilities in accordance with the requirements set forth in § 531.3; (2) an employer may request that a determination of "reasonable cost" be made, including a determination having particular application; and (3) an employer may request that a determination of "fair value" of the furnished facilities be made to be used in lieu of the actual measure of the cost of the furnished facilities in assessing the "wages" paid to an employee.

(b) "Reasonable cost," as determined in § 531.3 "does not include a profit to the employer or to any affiliated person." Although the question of affiliation is one of fact, where any of the following persons operate company stores or commissaries or furnish lodging or other facilities they will normally be deemed "affiliated persons" within the meaning of the regulations: (1) A spouse, child, parent, or other close relative of the employer; (2) a partner, officer, or employee in the employer company or firm; (3) a parent, subsidiary, or otherwise closely connected corporation; and (4) an agent of the employer.

§ 531.34 Payment in scrip or similar medium not authorized.

Scrip, tokens, credit cards, "dope checks," coupons, and similar devices are not proper mediums of payment under the Act. They are neither cash nor "other facilities" within the meaning of section 3(m). However, the use of such devices for the purpose of conveniently and accurately measuring wages earned or facilities furnished during a single pay period is not prohibited. Piecework earnings, for example, may be calculated by issuing tokens (representing a fixed amount of work performed) to the employee, which are redeemed at the end of the pay period for cash. The tokens do not discharge the obligation of the employer to pay wages, but they may enable him to determine the amount of cash which is due to the employee. Similarly board, lodging, or other facilities may be furnished during the pay period in exchange for scrip or coupons issued prior to the end of the pay period. The reasonable cost of furnishing such facilities may be included as part of the wage, since payment is being made not in scrip but in facilities furnished under the requirements of section 3(m). But the employer may not credit himself with "unused scrip" or "coupons outstanding" on the pay day in determining whether he has met the requirements of the Act because such scrip or coupons have not been redeemed for cash or facilities within the pay period. Similarly, the employee cannot be charged with the loss or destruction of scrip or tokens.

§ 531.35 "Free and clear" payment; "kickbacks".

Whether in cash or in facilities, "wages" cannot be considered to have been paid by the employer and received by the employee unless they are paid finally and unconditionally or "free and clear." The wage requirements of the Act will not be met where the employee "kicks-back" directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee. This is true whether the "kick-back" is made in cash or in other than cash. For example, if it is a requirement of the employer that the employee must provide tools of the trade which will be used in or are specifically required for the performance of the employer's particular work, there would be a violation of the Act in any workweek when the cost of such tools purchased by the employee cuts into the minimum or overtime wages required to be paid him under the Act. See also in this connection, § 531.32(c).

PAYMENT WHERE ADDITIONS OR DEDUCTIONS ARE INVOLVED

§ 531.36 Nonovertime workweeks.

(a) When no overtime is worked by the employee, section 3(m) and this part apply only to the applicable minimum wage for all hours worked. To illustrate, where an employee works 40 hours a week at a cash wage rate of \$1.60 an hour in a situation when that rate is the applicable minimum wage and is paid \$64 in cash free and clear at the end of the workweek, and in addition is furnished facilities valued at \$4, no consideration need be given to the question of whether such facilities meet the requirements of section 3(m) and this part, since the employee has received in cash the applicable minimum wage of \$1.60 an hour for all hours worked. Similarly, where an employee is employed at a rate of \$1.80 an hour and during a particular workweek works 40 hours for which he is paid \$64 in cash, the employer having deducted \$8 from his wages for facilities furnished, whether such deduction meets the requirement of section 3(m) and Subpart B of this part need not be considered, since the employee is still receiving, after the deduction has been made, a cash wage of \$1.60 an hour. Deductions for board, lodging, or other facilities may be made in nonovertime workweeks even if they reduce the cash wage below the minimum, provided the prices charged do not exceed the "reasonable cost" of such facilities. When such items are furnished the employee at a profit, the deductions from wages in weeks in which no overtime is worked are considered to be illegal only to the extent that the profit reduces the wage (which includes the "reasonable cost" of the facilities) below the required minimum. Accordingly, in a situation when \$1.60 an hour is the applicable minimum wage, if an employee employed at a rate of \$1.65 an hour works 40 hours in a workweek and

is paid only \$54 in cash, \$12 having been deducted for facilities furnished to him, such facilities must be measured by the requirements of section 3(m) and this part to determine if the employee has received the minimum of \$64 (40 hours x \$1.60) in cash or in facilities which may be legitimately included in "wages" payable under the Act. The same would be true where an employee is furnished the facilities in addition to a cash wage of \$54 for 40 hours of work. In either case, if the "reasonable cost" to the employer of legitimate facilities equals at least \$10 the requirements of the Act are met. Cf. *Southern Pacific Co. v. Joint Council Dining Car Employees*, 165 F. (2d) 26 (C.A. 9).

(b) Deductions for articles such as tools, miners' lamps, dynamite caps, and other items which do not constitute "board, lodging, or other facilities" may likewise be made in nonovertime workweeks if the employee nevertheless received the required minimum wage in cash free and clear; but to the extent that they reduce the wages of the employee in any such workweek below the minimum required by the Act, they are illegal.

§ 531.37 Overtime workweeks.

(a) Section 7 requires that the employee receive compensation for overtime hours at "a rate of not less than one and one-half times the regular rate at which he is employed." When overtime is worked by an employee who receives the whole or part of his wage in facilities and it becomes necessary to determine the portion of his wages represented by facilities, all such facilities must be measured by the requirements of section 3(m) and Subpart B of this part. It is the Administrator's opinion that deductions may be made, however, on the same basis in an overtime workweek as in non-overtime workweeks (see § 531.36), if their purpose and effect are not to evade the overtime requirements of the Act or other law, providing the amount deducted does not exceed the amount which could be deducted if the employee had only worked the maximum number of straight-time hours during the workweek. For example, in a situation where \$1.60 an hour is the applicable minimum wage, if an employee is employed at a rate of \$1.65 an hour (5 cents in excess of the minimum wage) the maximum amount which may be deducted from his wages in a 40-hour workweek for items such as tools, dynamite caps, miners' lamps, or other articles which are not "facilities" within the meaning of the Act, is 40 times 5 cents or \$2 (see § 531.36). Deductions in excess of this amount for such articles are illegal in overtime workweeks as well as in non-overtime workweeks. There is no limit on the amount which may be deducted for "board, lodging, or other facilities" in overtime workweeks (as in workweeks when no overtime is worked), provided that these deductions are made only for the "reasonable cost" of the items furnished. When such items are furnished at a profit, the amount of the profit (plus

the full amount of any deductions for articles which are not facilities) may not exceed \$2 in the example heretofore used in this paragraph. These principles assume a situation where bona fide deductions are made for particular items in accordance with the agreement or understanding of the parties. If the situation is solely one of refusal or failure to pay the full amount of wages required by section 7, these principles have no application. Deductions made only in overtime workweeks, or increases in the prices charged for articles or services during overtime workweeks will be scrutinized to determine whether they are manipulations to evade the overtime requirements of the Act.

(b) Where deductions are made from the stipulated wage of an employee, the regular rate of pay is arrived at on the basis of the stipulated wage before any deductions have been made. Where board, lodging, or other facilities are customarily furnished as addition to a cash wage, the reasonable cost of the facilities to the employer must be considered as part of the employee's regular rate of pay. See *Walling v. Alaska Pacific Consolidated Mining Co.*, 152 F. (2d) 812 (C.A. 9), cert. denied, 327 U.S. 803. Thus, suppose an employee employed at a cash rate of \$2 an hour, whose maximum nonovertime workweek under section 7(a) of the Act is 40 hours, works 44 hours during a particular workweek. If, in addition, he is furnished board, lodging, or other facilities valued at \$16, but whose "reasonable cost" is \$11, the \$11 must be added to his cash straight-time pay of \$88 (\$2 x 44 hours) in determining the regular rate of pay on which his overtime compensation is to be calculated. The regular rate then becomes \$2.25 an hour $((\$88 + \$11) \div 44 \text{ hours}) = \2.25 an hour . The employee is thus entitled to receive a total of \$103.50 for the week $((40 \text{ hours} \times \$2.25 = \$90) + (4 \text{ hours} \times \$3.375 = \$13.50))$. In addition to the straight-time pay of \$88 in cash and \$11 in facilities, extra compensation of \$4.50 in cash for the 4 overtime hours must, therefore, be paid by the employer, to meet the requirements of the Act.

PAYMENTS MADE TO PERSONS OTHER THAN EMPLOYEES

§ 531.38 Amounts deducted for taxes.

Taxes which are assessed against the employee and which are collected by the employer and forwarded to the appropriate governmental agency may be included as "wages" although they do not technically constitute "board, lodging, or other facilities" within the meaning of section 3(m). This principle is applicable to the employee's share of social security and State unemployment insurance taxes, as well as other Federal, State, or local taxes, levies, and assessments. No deduction may be made for any tax or share of a tax which the law requires to be borne by the employer.

§ 531.39 Payments to third persons pursuant to court order.

Where an employer is legally obliged, as by order of a court of competent and appropriate jurisdiction, to pay a sum for the benefit or credit of the employee to a creditor of the employee, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceeding, deduction from wages of the actual sum so paid is not prohibited: *Provided*, That neither the employer nor any person acting in his behalf or interest derives any profit or benefit from the transaction. In such case, payment to the third person for the benefit and credit of the employee will be considered equivalent, for the purposes of the Act, to payment to the employee.

§ 531.40 Payments to employee's assignee.

(a) Where an employer is directed by a voluntary assignment or order of his employee to pay a sum for the benefit of the employee to a creditor, donee, or other third party, deduction from wages of the actual sum so paid is not prohibited: *Provided*, That neither the employer nor any person acting in his behalf or interest, directly or indirectly, derives any profit or benefit from the transaction. In such case, payment to the third person for the benefit and credit of the employee will be considered equivalent, for purposes of the Act, to payment to the employee.

(b) No payment by the employer to a third party will be recognized as a valid payment of compensation required under the Act where it appears that such payment was part of a plan or arrangement to evade or circumvent the requirements of section 3(m) or Subpart B of this part. For the protection of both employer and employee it is suggested that full and adequate record of all assignments and orders be kept and preserved and that provisions of the applicable State law with respect to signing, sealing, witnessing, and delivery be observed.

(c) Under the principles stated in paragraphs (a) and (b) of this section, employers have been permitted to treat as payments to employees for purposes of the Act sums paid at the employees' direction to third persons for the following purposes: Sums paid, as authorized by the employee, for the purchase in his behalf of U.S. savings stamps or U.S. savings bonds; union dues paid pursuant to a collective bargaining agreement with bona fide representatives of the employees and as permitted by law; employees' store accounts with merchants wholly independent of the employer; insurance premiums (paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it); voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit directly or indirectly.

PAYMENT OF WAGES TO TIPPED EMPLOYEES

§ 531.50 Statutory provisions with respect to tipped employees.

(a) With respect to tipped employees, section 3(m) provides:

In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 50 per centum of the applicable minimum wage rate, except that in the case of an employee who (either himself or acting through his representative) shows to the satisfaction of the Secretary that the actual amount of tips received by him was less than the amount determined by the employer as the amount by which the wage paid him was deemed to be increased under this sentence, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount.

(b) "Tipped employee" is defined in section 3(t) of the Act as follows:

"Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than \$20 a month in tips.

§ 531.51 Conditions for taking tip credits in making wage payments.

The wage credit permitted on account of tips under section 3(m) may be taken only with respect to wage payments made under the Act to those employees whose occupations in the workweeks for which such payments are made are those of "tipped employees" as defined in section 3(t). Under section 3(t), the occupation of the employee must be one "in which he customarily and regularly receives more than \$20 a month in tips." To determine whether a tip credit may be taken in paying wages to a particular employee it is necessary to know what payments constitute "tips," whether the employee receives "more than \$20 a month" in such payments in the occupation in which he is engaged, and whether in such occupation he receives these payments in such amount "customarily and regularly." The principles applicable to a resolution of these questions are discussed in the following sections.

§ 531.52 General characteristics of "tips".

A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed for him. It is to be distinguished from payment of a charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer, and generally he has the right to determine who shall be the recipient of his gratuity. In the absence of an agreement to the contrary between the recipient and a third party, a tip becomes the property of the person in recognition of whose service it is presented by the customer. Only tips actually received by an employee as money belonging to him which he may use as he chooses free of any control by the employer, may be counted in determining whether he is a "tipped employee" within the meaning of the Act and in applying the provisions of section 3(m) which govern wage credits for tips.

§ 531.53 Payments which constitute tips.

In addition to cash sums presented by customers which an employee keeps as his own, tips received by an employee include, within the meaning of the Act, amounts paid by bank check or other negotiable instrument payable at par and amounts transferred by the employer to the employee pursuant to directions from credit customers who designate amounts to be added to their bills as tips. Special gifts in forms other than money or its equivalent as above described, such as theater tickets, passes, or merchandise, are not counted as tips received by the employee for purposes of the Act.

§ 531.54 Tip pooling.

Where employees practice tip splitting, as where waiters give a portion of their tips to the busboys, both the amounts retained by the waiters and those given the busboys are considered tips of the individuals who retain them, in applying the provisions of section 3(m) and 3(t). Similarly, where an accounting is made to an employer for his information only or in furtherance of a pooling arrangement whereby the employer redistributes the tips to the employees upon some basis to which they have mutually agreed among themselves, the amounts received and retained by each individual as his own are counted as his tips for purposes of the Act.

§ 531.55 Examples of amounts not received as tips.

(a) A compulsory charge for service, such as 10 percent of the amount of the bill, imposed on a customer by an employer's establishment, is not a tip and, even if distributed by the employer to his employees, cannot be counted as a tip received in applying the provisions of section 3(m) and 3(t). Similarly, where negotiations between a hotel and a customer for banquet facilities include amounts for distribution to employees of the hotel, the amounts so distributed are not counted as tips received. Likewise, where the employment agreement is such that amounts presented by customers as tips belong to the employer and must be credited or turned over to him, the employee is in effect collecting for his employer additional income from the operations of the latter's establishment. Even though such amounts are not collected by imposition of any compulsory charge on the customer, plainly the employee is not receiving tips within the meaning of section 3(m) and 3(t). The amounts received from customers are the employer's property, not his, and do not constitute tip income to the employee.

(b) As stated above, service charges and other similar sums which become part of the employer's gross receipts are not tips for the purposes of the Act. However, where such sums are distributed by the employer to his employees, they may be used in their entirety to satisfy the monetary requirements of the Act. Also, if pursuant to an employment agreement the tips received by an employee must be

credited or turned over to the employer, such sums may, after receipt by the employer, be used by the employer to satisfy the monetary requirements of the Act. In such instances, there is no applicability of the 50-percent limitation on tip credits provided by section 3(m).

§ 531.56 "More than \$20 a month in tips."

(a) *In general.* An employee who receives tips, within the meaning of the Act, is a "tipped employee" under the definition in section 3(t) when, in the occupation in which he is engaged, the amounts he receives as tips customarily and regularly total "more than \$20 a month." An employee employed in an occupation in which the tips he receives meet this minimum standard is a "tipped employee" for whom the wage credit provided by section 3(m) may be taken in computing the compensation due him under the Act for employment in such occupation, whether he is employed in it full time or part time. An employee employed full time or part time in an occupation in which he does not receive more than \$20 a month in tips customarily and regularly is not a "tipped employee" within the meaning of the Act and must receive the full compensation required by its provisions in cash or allowable facilities without any deduction for tips received under the provisions of section 3(m).

(b) *Month.* The definition of tipped employee does not require that the calendar month be used in determining whether more than \$20 a month is customarily and regularly received as tips. Any appropriate recurring monthly period beginning on the same day of the calendar month may be used.

(c) *Individual tip receipts are controlling.* An employee must himself customarily and regularly receive more than \$20 a month in tips in order to qualify as a tipped employee. The fact that he is part of a group which has a record of receiving more than \$20 a month in tips will not qualify him. For example, a waitress who is newly hired will not be considered a tipped employee merely because the other waitresses in the establishment receive tips in the requisite amount. For the method of applying the test in initial and terminal months of employment, see § 531.58.

(d) *Significance of minimum monthly tip receipts.* More than \$20 a month in tips customarily and regularly received by the employee is a minimum standard that must be met before any wage credit for tips is determined under section 3(m). It does not govern or limit the determination by the employer or the Secretary of Labor of the appropriate amount (up to 50 percent of the minimum wage) of wage credit under section 3(m) that may be taken for tips.

(e) *Dual jobs.* In some situations an employee is employed in a dual job, as for example, where a maintenance man in a hotel also serves as a waiter. In such a situation the employee, if he customarily and regularly receives at least \$20 a month in tips for his work as a waiter,

is a tipped employee only with respect to his employment as a waiter. He is employed in two occupations, and no tip credit can be taken for his hours of employment in his occupation of maintenance man. Such a situation is distinguishable from that of a waitress who spends part of her time cleaning and setting tables, toasting bread, making coffee and occasionally washing dishes or glasses. It is likewise distinguishable from the counterman who also prepares his own short orders or who, as part of a group of countermen, takes a turn as short order cook for the group. Such related duties in an occupation that is a tipped occupation need not by themselves be directed toward producing tips.

§ 531.57 Receiving the minimum amount "customarily and regularly."

The employee must receive more than \$20 a month in tips "customarily and regularly" in the occupation in which he is engaged in order to qualify as a tipped employee under section 3(t). If it is known that he always receives more than the stipulated amount each month, as may be the case with many employees in occupations such as those of waiters, bellhops, taxicab drivers, barbers, or beauty operators, the employee will qualify and the tip credit provisions of section 3(m) may be applied. On the other hand, an employee who only occasionally or sporadically receives tips totalling more than \$20 a month, such as at Christmas or New Years when customers may be more generous than usual, will not be deemed a tipped employee. The phrase "customarily and regularly" signifies a frequency which must be greater than occasional, but which may be less than constant. If an employee is in an occupation in which he normally and recurrently receives more than \$20 a month in tips, he will be considered a tipped employee even though occasionally, because of sickness, vacation, seasonal fluctuations or the like, he fails to receive more than \$20 in tips in a particular month.

§ 531.58 Initial and terminal months.

An exception to the requirement that an employee, whether full-time, part-time, permanent or temporary, will qualify as a tipped employee only if he customarily and regularly receives more than \$20 a month in tips is made in the case of initial and terminal months of employment. In such months the purpose of the provision for tipped employees would seem fulfilled if qualification as a tipped employee is based on his receipt of tips in the particular week or weeks of such month at a rate in excess of \$20 a month, where the employee has worked less than a month because he started or terminated employment during the month.

§ 531.59 The tip wage credit.

In determining compliance with the wage payment requirements of the Act, under the provisions of section 3(m) the amount paid to a tipped employee by an employer is deemed to be increased on account of tips by an amount which

cannot exceed 50 percent of the minimum wage applicable to such employee in the workweek for which the wage payment is made. This credit is in addition to any credit for board, lodging, or other facilities which may be allowable under section 3(m). The credit allowed on account of tips may be less than 50 percent of the applicable minimum wage; it cannot be more. The actual amount is left by the statute to determination by the employer on the basis of his information concerning the tipping practices and receipts in his establishment. However, section 3(m) provides that an employee who can show to the satisfaction of the Secretary of Labor that the actual amount of tips received by him was less than the amount determined by the employer as a tip credit shall receive an appropriate wage adjustment. See § 531.50(a). As stated in Senate Report No. 1487 (89th Cong. 2d sess.), it is presumed that in the application of this special provision the employee will be receiving at least the maximum tip credit in actual tips: "If the employee is receiving less than the amount credited, the employer is required to pay the balance so that the employee receives at least the minimum wage with the defined combination of wages and tips." Provision is made in § 531.7 for employee requests for review of tip credit determinations made by employers, in the event that the employee considers that the tip credit taken exceeds his actual tips. As indicated in § 531.51, the tip credit may be taken only for hours worked by the employee in an occupation in which he qualifies as a "tipped employee." Under employment agreements requiring tips to be turned over or credited to the employer to be treated by him as part of his gross receipts, it is clear from the legislative history that the employer must pay the employee the full minimum hourly wage, since for all practical purposes the employee is not receiving tip income. See also § 531.54.

§ 531.60 Overtime payments.

(a) When overtime is worked by a tipped employee who is subject to the overtime pay provisions of the Act, his regular rate of pay is determined by dividing his total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by him in that workweek for which such compensation was paid. (See Part 778 of this chapter for a detailed discussion of overtime compensation under the Act.) In accordance with section 3(m), a tipped employee's regular rate of pay includes the amount of tip credit taken by the employer (not in excess of 50 percent of the applicable minimum wage), the reasonable cost or fair value of any facilities furnished him by the employer, as authorized under section 3(m) and this Part 531, and the cash wages including commissions and certain bonuses paid by the employer. Any tips received by the employee in excess of the tip credit need not be included in the regular rate. Such tips are not payments made by the

employer to the employee as remuneration for employment within the meaning of the Act.

[P.R. Doc. 67-11396; Filed, Sept. 27, 1967; 8:48 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER J—BRIDGES

[CFR 67-55]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Broward River, Fla.

1. There were transferred to and vested in the Secretary of Transportation, by subsection 6(g) of the Department of Transportation Act (Public Law 89-670, 80 Stat. 931-950, 49 U.S.C. 1651 et seq.), certain functions, powers, and duties previously performed by the Secretary of the Army and other officers and offices of the Department of the Army (Corps of Engineers) which included the regulations of drawbridge operations under 33 U.S.C. 499. The Secretary of Transportation, by Department of Transportation Order 1100.1 dated March 31, 1967 (49 CFR 1.4(a)(3)), delegated to and authorized the Commandant, U.S. Coast Guard, to prescribe rules and regulations under the provisions of section 5 of the River and Harbor Act of August 18, 1894, as amended (28 Stat. 362; 33 U.S.C. 499).

2. The Atlantic Coast Line Railroad Co. by letter dated January 17, 1967, requested the Corps of Engineers, Department of Army, to prescribe special regulations to govern the operation of its drawbridge across Broward River near Heckscher Drive in Duval County, Fla. The request was that drawtender need not be kept in constant attendance and that 24 hours advance notice to the authorized representative of the Atlantic Coast Line Railroad Co. be required of the time an opening of the drawspan is required. In accordance with the procedures in 33 CFR 209.520, public notice dated January 27, 1967, setting forth the proposed regulations to govern the operation of this drawbridge was issued by the Jacksonville District, Corps of Engineers, and was made available to all persons known to have an interest in this subject. After consideration of all comments submitted in response thereto, the request is granted, subject to the right to change the requirements and to amend the regulations if and when necessary in the public interest. The purpose of this document is to prescribe special regulations for the operation of the Atlantic Coast Line Railroad Co. drawbridge across Broward River near Heckscher Drive, Duval County, Fla.

3. By virtue of the authority vested in me as Commandant, U.S. Coast Guard, by 14 U.S.C. 632 and Department of Transportation Order 1100.1 (49 CFR

1.4(a)(3)), the text of 33 CFR 117.245 (h) (23-a) shall read as follows and shall be effective on and after 30 days after date of publication of this document in the FEDERAL REGISTER:

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

(h) * * *
(23-a) Broward River, Fla.; Atlantic Coast Line Railroad Co. Bridge near Heckscher Drive, Duval County: (1) At least 24 hours' advance notice required.

(Sec. 5, 28 Stat. 362, as amended; 33 U.S.C. 499. Department of Transportation Order 1100.1, Mar. 31, 1967; 49 CFR 1.4(a)(3)(v), 32 F.R. 5606)

Dated: September 21, 1967.

W. J. SMITH,
Admiral, U.S. Coast Guard,
Commandant.

[F.R. Doc. 67-11393; Filed, Sept. 27, 1967;
8:48 a.m.]

[CGFR 67-58]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Mare Island Strait, Napa River, and Their Tributaries

1. There were transferred to and vested in the Secretary of Transportation, by subsection 6(g) of the Department of Transportation Act (Public Law 89-670, 80 Stat. 931-950, 49 U.S.C. 1651 et seq.), certain functions, powers, and duties previously performed by the Secretary of the Army and other officers and offices of the Department of the Army (Corps of Engineers) which included the regulation of drawbridge operations under 33 U.S.C. 499. The Secretary of Transportation, by Department of Transportation Order 1100.1 dated March 31, 1967 (49 CFR 1.4(a)(3)), delegated to and authorized the Commandant, U.S. Coast Guard, to prescribe rules and regulations under the provisions of section 5 of the River and Harbor Act of August 18, 1894, as amended (28 Stat. 362; 33 U.S.C. 499).

2. A previous amendment to the regulations governing the operation of drawbridges across Mare Island Strait, Napa River, and their tributaries, was published in the FEDERAL REGISTER on March 7, 1967 (32 F.R. 3772). The purpose of that amendment was only to delete reference to the State of California highway drawbridge across Napa River since that drawbridge had been converted to a fixed structure and regulations for governing its operation were no longer applicable. In the process, the regulation governing the hours of operation of the Department of the Navy bridge (Mare Island Causeway) at Vallejo was inadvertently changed. The

purpose of this document is to amend the requirements of 33 CFR 117.712(i)(1) (formerly § 203.712(i)(1)) to correct this error by revising the operating hours of the remaining drawbridge to conform to those previously in effect.

3. By virtue of the authority vested in me as Commandant, U.S. Coast Guard, by 14 U.S.C. 632 and Department of Transportation Order 1100.1 (49 CFR 1.4(a)(3)), the text of 33 CFR 117.712(i)(1) (formerly § 203.712(i)(1)), as corrected, is effective as of March 7, 1967, the date of publication in the FEDERAL REGISTER of the previous change, and shall read as follows:

§ 117.712 Tributaries of San Francisco Bay and San Pablo Bay, Calif.

(i) *Mare Island Strait, Napa River, and their tributaries, California—(1) Department of the Navy bridge (Mare Island Causeway) at Vallejo. From 6:30 a.m. to 7:30 a.m. and from 3:45 p.m. to 4:45 p.m. daily, except Saturdays, Sundays, and holidays, the draw need not be opened for the passage of vessels other than vessels owned, operated, or controlled by the United States.*

(Sec. 5, 28 Stat. 362, as amended; 33 U.S.C. 499. Department of Transportation Order 1100.1, Mar. 3, 1967; 49 CFR 1.4(a)(3)(v), 32 F.R. 5606)

Dated: September 21, 1967.

W. J. SMITH,
Admiral, U.S. Coast Guard,
Commandant.

[F.R. Doc. 67-11394; Filed, Sept. 27, 1967;
8:48 a.m.]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter I—National Park Service, Department of the Interior

PART 50—NATIONAL CAPITAL PARK REGULATIONS

Parades and Public Gatherings

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by section 3 of the act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 3), that § 50.19 of Part 50 of Title 36, Code of Federal Regulations is amended as is set forth below. The purpose of the amendment is to clarify § 50.19 and extend the requirement of obtaining a permit for parades and public gatherings to sidewalks contiguous to park areas under the jurisdiction of the National Capital Region within the District of Columbia, in accordance with the act of March 4, 1909 (35 Stat. 994; 8 D.C. Code 144).

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. However, because of the need to immediately clarify the regulation in order to avoid possible conflict, misconception, and inequality concerning the issuance

of permits for public gatherings in the National Capital Region, National Park Service, and to facilitate administration so as to allow for the maximum feasible number of such public gatherings in a manner not detrimental to the health, safety, and morals of those persons engaged in the public gathering and members of the public in general, it has been determined that it is impracticable and contrary to the public interest to delay implementation of this regulation. Accordingly, this amendment shall be effective on the date of its publication in the FEDERAL REGISTER.

(5 U.S.C. 553; 39 Stat. 535, 16 U.S.C. 3; 35 Stat. 994, 8 D.C. Code 144)

Section 50.19 is amended by revising introductory paragraph (c) as set forth below. Subparagraphs (1), (2), and (3) of paragraph (c) remain unchanged.

§ 50.19 Parades and public gatherings.

(c) Public gatherings may be held and speeches may be made in any park area under the jurisdiction or subject to regulatory authority of the National Capital Region, which shall mean and include any sidewalk in the District of Columbia contiguous to such park area, subject to the condition that an official permit therefor be first issued by the park Superintendent. Use of the areas set forth in paragraph (b) of this section, or sidewalks contiguous thereto, in accordance with the terms of that paragraph, shall not be subject to the requirements of this paragraph.

Dated: September 26, 1967.

STEWART L. UDALL,
Secretary of the Interior.

[F.R. Doc. 67-11479; Filed, Sept. 27, 1967;
9:29 a.m.]

Title 37—PATENTS, TRADE- MARKS, AND COPYRIGHTS

Chapter I—Patent Office, Department of Commerce

PART 1—RULES OF PRACTICE IN PATENT CASES

Amendment of Claims

Sections 1.119, 1.121, and 1.126 (Patent Rules 119, 121, and 126) are revised as set forth below, said revisions to take effect November 1, 1967. The prosecution of all applications for which no amendment has been filed prior to November 1, 1967, must be in compliance with the sections as revised.

The purpose of these revisions is to effect more efficient operation in the prosecution of patent applications as well as in the clerical operations in support thereof.

The general substance of the proposed revisions was published in the FEDERAL REGISTER of June 24, 1967 (32 F.R. 9026). A hearing was held on July 31, 1967, and all persons, who desired to, were invited