

**(a) Applicability**

This AD applies to Model MBB-BK 117 C-2 helicopters, serial numbers up to and including 9750, and Model MBB-BK 117 D-2 helicopters, serial numbers up to and including 20110, with a hydraulic module plate assembly part number B291M0003103 with a single locking attachment point installed, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as failure of a hydraulic module plate assembly attachment point (attachment point). This condition could result in loss of the hydraulic module plate and subsequent loss of control of the helicopter.

**(c) Affected ADs**

This AD supersedes 2017-02-07, Amendment 39-18786 (82 FR 10267, February 10, 2017).

**(d) Comments Due Date**

We must receive comments by February 5, 2018.

**(e) Compliance**

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

**(f) Required Actions**

(1) Within 100 hours time-in-service (TIS):

(i) Visually inspect the split pins, castellated nuts, plugs, nuts, and hexagon bolts of each attachment point for a crack and for proper installation by following the Accomplishment Instructions, paragraphs 3.B.1.3.a. through 3.B.1.3.d., of Airbus Helicopters Alert Service Bulletin (ASB) No. ASB MBB-BK117 C-2-29A-003 (ASB MBB-BK117 C-2-29A-003) or Airbus Helicopters ASB No. ASB MBB-BK117 D-2-29A-001 (ASB MBB-BK117 D-2-29A-001), both Revision 2 and both dated February 1, 2017, as applicable to your model helicopter. Replace any part that has a crack before further flight. If the split pins, castellated nuts, or hexagon bolts are not as depicted in Figure 2 of ASB MBB-BK117 C-2-29A-003 or ASB MBB-BK117 D-2-29A-001, before further flight, properly install them.

(ii) Apply a torque of 9 to 10 Nm to the left-hand and right-hand nuts of each attachment point. If a torque of 9 to 10 Nm cannot be applied, replace the affected nut before further flight.

(2) Within 300 hours TIS:

(i) Replace each forward single locking attachment hardware with double locking attachment hardware by following the Accomplishment Instructions, paragraphs 3.B.3.3. through 3.B.3.6. on page 11 of ASB MBB-BK117 C-2-29A-003 or ASB MBB-BK117 D-2-29A-001, as applicable to your model helicopter, except you are not required to discard old parts.

(ii) Replace each aft single locking attachment hardware with double locking attachment hardware by following the Accomplishment Instructions, paragraphs 3.B.3.1. through 3.B.3.3. on page 13 of ASB MBB-BK117 C-2-29A-003 or ASB MBB-BK117 D-2-29A-001, as applicable to your

model helicopter, except you are not required to discard old parts.

**(g) Credit for Previous Actions**

Actions accomplished before the effective date of this AD in accordance with the procedures specified in AD 2017-02-07, Amendment 39-18786 (82 FR 10267, February 10, 2017) or Airbus Helicopters ASB No. ASB MBB-BK117 C-2-29A-003 or ASB No. ASB MBB-BK117 D-2-29A-001, both Revision 1 and both dated October 14, 2016, are considered acceptable for compliance with the corresponding actions specified in paragraph (f)(1) of this AD.

**(h) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Safety Management Section, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email [9-ASW-FTW-AMOC-Requests@faa.gov](mailto:9-ASW-FTW-AMOC-Requests@faa.gov).

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

**(i) Additional Information**

(1) Airbus Helicopters ASB No. ASB MBB-BK117 C-2-29A-003 and ASB No. ASB MBB-BK117 D-2-29A-001, both Revision 1 and both dated October 14, 2016, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641-0000 or (800) 232-0323; fax (972) 641-3775; or at <http://www.airbushelicopters.com/techpub>. You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2017-0047, dated March 13, 2017. You may view the EASA AD on the Internet at <http://www.regulations.gov> in the AD Docket.

**(j) Subject**

Joint Aircraft Service Component (JASC) Code: 2900, Hydraulic Power System.

Issued in Fort Worth, Texas, on November 17, 2017.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2017-26039 Filed 12-4-17; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF THE TREASURY****Alcohol and Tobacco Tax and Trade Bureau****27 CFR Parts 24 and 27**

[Docket No. TTB-2016-0014; Notice No. 168A; Re: Notice No. 168, T.D. TTB-147, and T.D. TTB 147A]

RIN 1513-AC31

**Implementation of Statutory Amendments Requiring the Modification of the Definition of Hard Cider; Delayed Compliance Date for the Hard Cider Tax Class Labeling Statement Requirement; Reopening of Comment Period**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notice of proposed rulemaking and reopening of comment period.

**SUMMARY:** On January 23, 2017, the Alcohol and Tobacco Tax and Trade Bureau (TTB) published a temporary rule, T.D. TTB-147, Implementation of Statutory Amendments Requiring the Modification of the Definition of Hard Cider, that amended its regulations to implement changes made to the definition of “hard cider” in the Internal Revenue Code of 1986 by the Protecting Americans from Tax Hikes Act (PATH Act) of 2015. The amended regulations included a requirement that the statement “Tax class 5041(b)(6)” appear on the container of any wine for which the hard cider tax rate is claimed if the wine is removed from wine premises or customs custody on or after January 1, 2018. Concurrent with the temporary rule, TTB published Notice of Proposed Rulemaking No. 168 requesting comments on the regulatory amendments made by T.D. TTB-147. In response to a comment received from a cider industry trade association, TTB, in a temporary rule published elsewhere in this issue of the **Federal Register**, is now delaying the compliance date for the hard cider tax class labeling requirement by one year, until January 1, 2019. In this document, TTB is requesting comments on that delayed compliance date, and we are also reopening the comment period for Notice No. 168 for an additional 60 days to request comments on the regulatory amendments described in T.D. TTB-147.

**DATES:** Comments on the delayed compliance date referenced in this document (Notice No. 168A) are due on or before February 5, 2018. The comment period for the proposed rule, Notice No. 168, published on January

23, 2017, at 82 FR 7753 is reopened for 60 days, and, therefore, comments on Notice No. 168 also are now due on or before February 5, 2018.

**ADDRESSES:** Please send your comments on Notice No. 168 or Notice No. 168A to one of the following addresses:

- *Internet:* <https://www.regulations.gov> (via the online comment forms for Notice No. 168 or Notice No. 168A, as appropriate, which are posted within Docket No. TTB–2016–0014 at *Regulations.gov*, the Federal e-rulemaking portal);

- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005.

See the Public Participation sections of Notice No. 168 and this document (Notice No. 168A) for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this document, Notice No. 168, and any comments made to TTB about the described proposals at <https://www.regulations.gov> within Docket No. TTB–2016–0014. A link to that docket is posted on the TTB Web site at <https://www.ttb.gov/wine/wine-rulemaking.shtml> under Notice No. 168 or Notice No. 168A. You also may view copies of this document, Notice No. 168, and any comments made to TTB about the described proposals by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. Please call (202) 453–2270 to make an appointment.

**FOR FURTHER INFORMATION CONTACT:** Kara Fontaine, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone (202) 453–1039, ext. 103.

**SUPPLEMENTARY INFORMATION:** In T.D. TTB–147, a temporary rule published in the **Federal Register** on January 23, 2017, at 82 FR 7653, the Alcohol and Tobacco Tax and Trade Bureau (TTB) implemented changes made to the definition of “hard cider” in the Internal Revenue Code of 1986 by the Protecting Americans from Tax Hikes (PATH) Act of 2015 (Consolidated Appropriations Act, 2016 (Pub. L. 114–113), Division Q). The modified definition broadened the range of wines eligible for the hard cider tax rate. In T.D. TTB–147, TTB amended its regulations to reflect the

modified definition of hard cider effective for products removed from wine premises or customs custody on or after January 1, 2017, and set forth new labeling requirements to identify products to which the hard cider tax rate applies. The new labeling requirements include both a one-year transitional rule and a new labeling requirement that takes effect for products removed on or after January 1, 2018.

TTB solicited public comments on the temporary regulations via Notice No. 168, a notice of proposed rulemaking published in the **Federal Register** on January 23, 2017, at 82 FR 7753. The temporary regulations contained in T.D. TTB–147 served as the text of the proposed regulations. The original 60-day comment period for Notice No. 168 closed on March 24, 2017.

In response to this comment request, TTB received a comment, posted on February 15, 2017, from Ian Flom of Mercier Orchards, indicating that the timeframe to implement the new “Tax Class 5041(b)(6)” labeling statement requirement is insufficient because he buys labels in bulk and has a supply of labels that do not bear the tax class statement that he will not be able to use up before January 1, 2018. In addition, TTB received a letter, dated February 23, 2017, from the United States Association of Cider Makers (USACM), a cider industry trade association based in Portland, Oregon, requesting a 60-day extension of the comment period for Notice No. 168. In its letter, the USACM noted that “there was much discussion about these proposed changes” at its annual membership conference and that a number of its members planned to submit comments to TTB. The letter also noted, however, that “orchardists are currently facing time-management challenges due to pruning season,” and that the requested extension “would allow our members time to properly address any of their concerns with the proposed changes to the hard cider definition and related regulatory changes.” The USACM comment period extension request letter is posted as Comment 2 to Notice No. 168 within Docket No. TTB–2016–0014 on the *Regulations.gov* Web site at <https://www.regulations.gov>.

In addition to USACM’s request to TTB to extend the comment period, USACM wrote a letter, on which TTB was copied, to Steven T. Mnuchin, Secretary of the Treasury, dated August 1, 2017, requesting both a reopening of the comment period of T.D. TTB–147 and a one year delay of the January 1, 2018, hard cider tax class labeling statement requirement. A copy of this

USACM letter is posted as Comment 3 to Notice No. 168 within Docket No. TTB–2016–0014 on the *Regulations.gov* Web site.

In light of these requests, TTB is delaying the hard cider tax class labeling statement compliance date. Such a delay will provide industry members additional time to come into compliance with the labeling requirement. Through the publication of a temporary rule elsewhere in this issue of the **Federal Register**, TTB is amending 27 CFR 24.257(a)(4) to delay until January 1, 2019, the compliance date for the requirement that the tax class statement “Tax class 5041(b)(6)” appear on any container of wine removed from wine premises or customs custody for which the hard cider tax rate is claimed. Because the tax class labeling requirement contained in 27 CFR 27.59(b) is a cross-reference to § 24.257(a)(4), no change to the regulatory text in § 27.59(b) is required.

Further, in response to the USACM request to reopen the comment period for all the regulatory amendments contained in T.D. TTB–147, TTB is reopening the comment period for the related notice of proposed rulemaking, Notice No. 168, for an additional 60 days. TTB believes that this additional 60-day comment period will allow all interested parties to fully consider and comment on the regulatory amendments contained in the hard cider temporary rule.

Therefore, new comments on Notice No. 168 and comments on this document (Notice No. 168A) delaying the compliance date of the hard cider tax class labeling requirement are due to TTB on or before February 5, 2018.

## Public Participation

### Comments Sought

TTB requests comments from interested members of the public on the one-year delay, from January 1, 2018, to January 1, 2019, of the hard cider tax-class labeling statement requirement contained in 27 CFR 24.257, as described in the temporary rule, T.D. TTB–147A, published elsewhere in this issue of the **Federal Register**. TTB also requests new comments on the regulatory amendments to 27 CFR parts 24 and 27 set forth in the temporary rule, T.D. TTB–147, published in the **Federal Register** on January 23, 2017 at 82 FR 7653.

### Submitting Comments

You may submit comments by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online

comment form for this proposed rule (Notice No. 168A) or for Notice No. 168, as appropriate, posted within Docket No. TTB-2016-0014 on “*Regulations.gov*,” the Federal e-rulemaking portal, at <https://www.regulations.gov>. A direct link to that docket is available under Notice No. 168 and Notice No. 168A on the TTB Web site at <https://www.ttb.gov/wine/wine-rulemaking.shtml>. Supplemental files may be attached to comments submitted via *Regulations.gov*. For complete instructions on how to use *Regulations.gov*, click on the site’s “Help” tab.

- *U.S. Mail*: You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005.

- *Hand Delivery/Courier*: You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this proposed rule. Your comments must reference Notice No. 168A or Notice No. 168, as appropriate, and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments and considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity’s name as well as your name and position title. In your comment via *Regulations.gov*, please enter the entity’s name in the “Organization” blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity’s comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

#### Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

#### Public Disclosure

TTB will post, and you may view, copies of the proposed rules, the related temporary rules, and any online or mailed comments received about them, within Docket No. TTB-2016-0014 on *Regulations.gov*, the Federal e-rulemaking portal. A direct link to that docket is available on the TTB Web site at <https://www.ttb.gov/wine/wine-rulemaking.shtml> under Notice No. 168 or Notice No. 168A. You may also reach the relevant docket through the *Regulations.gov* search page at <https://www.regulations.gov>. For information on how to use *Regulations.gov*, click on the site’s “Help” tab.

All posted comments will display the commenter’s name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that it considers unsuitable for posting.

You may view copies of the proposed rules, the related temporary rules, and any electronic or mailed comments TTB receives about them by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. You may also obtain copies for 20 cents per 8.5- × 11-inch page. Contact TTB’s information specialist at the above address or by telephone at (202) 453-2270 to schedule an appointment or to request copies of comments or other materials.

#### Regulatory Flexibility Act, Paperwork Reduction Act, and Executive Order 12866

Since the regulatory text proposed in this notice of proposed rulemaking is identical to that contained in the companion temporary rule published elsewhere in this issue of the **Federal Register**, the analyses contained in the preamble of the temporary rule concerning the Regulatory Flexibility Act, the Paperwork Reduction Act, and Executive Order 12866 also apply to this proposed rule.

#### Drafting Information

Kara Fontaine and Michael Hoover of the Regulations and Rulings Division drafted this document with the assistance of other Alcohol and Tobacco Tax and Trade Bureau personnel.

#### List of Subjects

##### 27 CFR Part 24

Administrative practice and procedure, Cider, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Hard Cider, Labeling, Liquors, Packaging and

containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

##### 27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspections, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and Recordkeeping requirements, Wine.

#### Proposed Amendments to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR chapter I, parts 24 and 27, as follows:

#### PART 24—WINE

- 1. The authority citation for part 24 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5121, 5122-5124, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364-5373, 5381-5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

##### § 24.257 [Amended]

- 2. In § 24.257:

- a. Paragraph (a)(4) is amended by removing the date “January 1, 2018” each place it appears and adding in its place the date “January 1, 2019”; and

- b. The Office of Management and Budget control number reference at the end of the section is amended by removing the phrase “1513-0115 and 1513-XXXX” and adding in its place the phrase “1513-0092 and 1513-0138”.

#### PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

- 3. The authority citation for part 27 is revised to read as follows:

**Authority:** 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5121, 5122-5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5382, 5555, 6109, 6302, 7805.

##### § 27.59 [Amended]

- 4. In § 27.59, the Office of Management and Budget control number reference at the end of the section is amended by removing the phrase “number 1513-XXXX” and adding in its place the phrase “numbers 1513-0092 and 1513-0138”.

Signed: October 30, 2017.

**John J. Manfreda,**  
Administrator.

Approved: November 30, 2017.

**Timothy E. Skud,**

Deputy Assistant Secretary (Tax, Trade and  
Tariff Policy).

[FR Doc. 2017-26283 Filed 12-4-17; 8:45 am]

BILLING CODE 4810-31-P

## DEPARTMENT OF LABOR

### Wage and Hour Division

#### 29 CFR Part 531

RIN 1235-AA21

#### Tip Regulations Under the Fair Labor Standards Act (FLSA)

**AGENCY:** Wage and Hour Division,  
Department of Labor.

**ACTION:** Notice of proposed rulemaking;  
request for comments.

**SUMMARY:** The Department of Labor (Department) is proposing to rescind portions of its tip regulations issued pursuant to the Fair Labor Standards Act that impose restrictions on employers that pay a direct cash wage of at least the full federal minimum wage and do not seek to use a portion of tips as a credit toward their minimum wage obligations. This Notice of Proposed Rulemaking (NPRM) seeks the views of the public on the Department's proposed rescission of those portions of the regulations.

**DATES:** Comments must be received on or before January 4, 2018.

**ADDRESSES:** To facilitate the receipt and processing of written comments on this NPRM, the Department encourages interested persons to submit their comments electronically. You may submit comments, identified by Regulatory Information Number (RIN) 1235-AA21, by either of the following methods:

*Electronic Comments:* Follow the instructions for submitting comments on the Federal eRulemaking Portal <http://www.regulations.gov>.

*Mail:* Address written submissions to Melissa Smith, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW., Washington, DC 20210.

*Instructions:* This NPRM is available through the **Federal Register** and the <http://www.regulations.gov> Web site. You may also access this document via the Wage and Hour Division's (WHD) Web site at <http://www.dol.gov/whd/>.

All comment submissions must include the agency name and Regulatory Information Number (RIN 1235-AA21) for this NPRM. Response to this NPRM is voluntary. The Department requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this NPRM. Submit only one copy of your comment by only one method (e.g., persons submitting comments electronically are encouraged not to submit paper copies). Please be advised that comments received will become a matter of public record and will be posted without change to <http://www.regulations.gov>, including any personal information provided. All comments must be received by 11:59 p.m. on the date indicated for consideration in this NPRM; comments received after the comment period closes will not be considered. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period. Electronic submission via <http://www.regulations.gov> enables prompt receipt of comments submitted as DOL continues to experience delays in the receipt of mail in our area. For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Melissa Smith, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW., Washington, DC 20210, telephone: (202) 693-0406 (this is not a toll-free number). Copies of this NPRM may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693-0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1 (877) 889-5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of the agency's regulations may be directed to the nearest WHD district office. Locate the nearest office by calling the WHD's toll-free help line at (866) 4US-WAGE ((866) 487-9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto WHD's Web site at <http://www.dol.gov/whd/america2.htm> for a nationwide listing of WHD district and area offices.

#### SUPPLEMENTARY INFORMATION:

##### I. Executive Summary

The Fair Labor Standards Act of 1938 (FLSA) generally requires covered employers to pay employees at least a

Federal minimum wage, which is currently \$7.25 per hour. See 29 U.S.C. 206(a)(1). Under section 3(m) of the FLSA, which defines the term "wage," an employer of tipped employees can satisfy its obligation to pay those employees the Federal minimum wage by paying a lower direct cash wage and counting a limited amount of the tips received by its employees as a partial credit to satisfy the difference between the direct cash wage paid and the Federal minimum wage (known as a "tip credit"), if it follows certain statutory requirements. See 29 U.S.C. 203(m).

In 1966, Congress created a tip credit provision within the definition of a "wage" in section 3(m) of the statute that permitted an employer to utilize tips received by its employees to subsidize up to 50 percent of its minimum wage obligations. See Public Law 89-601, 101(a), 80 Stat. 830 (1966); 76 FR 18,832, 18,838.<sup>1</sup> In 1974, Congress again amended section 3(m) by providing that an employer could not utilize tips received by its employees toward its Federal minimum wage obligation unless, among other things:

(1) [its] employee has been informed by the employer of the provisions of this subsection and (2) all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

Public Law 93-259, 13(e), 88 Stat. 55 (1974). Thus, section 3(m) permits an employer to take a partial credit against its minimum wage obligations on account of tips received by its employees but only if, among other things, its tipped employees retain all of their tips. Section 3(m), however, does not preclude an employer that takes a tip credit from implementing a tip pool in which tips are shared only among those employees who "customarily and regularly receive tips." *Id.*

The Department first promulgated regulations implementing the section 3(m) tip credit in 1967. See 32 FR 13,575 (Sept. 28, 1967). In 2011, the Department updated those regulations to reflect its then-existing view that the statutory conditions in section 3(m) of the FLSA require that tipped employees retain all of their tips, except for those tips distributed through a tip pool limited to customarily and regularly tipped employees, regardless whether such employees work for an employer that takes a tip credit. See, e.g., § 531.52.

<sup>1</sup> As discussed further below, Congress changed the amount of tips received by employees that an employer can credit against its minimum wage obligation in subsequent amendments to the FLSA. See, *infra*, Sec. III.