at the commencement of his workday oil, grease or clean his machine, or install a new cutting tool. Such activities are an integral part of the principal activity, and are included within such term.

(2) In the case of a garment worker in a textile mill, who is required to report 30 minutes before other employees report to commence their principal activities, and who during such 30 minutes distributes clothing or parts of clothing at the work-benches of other employees and gets machines in readiness for operation by other employees, such activities are among the principal activities of such employee.

Such preparatory activities, which the Administrator has always regarded as work and as compensable under the Fair Labor Standards Act, remain so under the Portal Act, regardless of contrary custom or contract.[63]

(c) Among the activities included as an integral part of a principal activity are those closely related activities which are indispensable to its performance.[64] If an employee in a chemical plant, for example, cannot perform his principal activities without putting on certain clothes,[65] changing clothes on the employer's premises at the beginning and end of the workday would be an integral part of the employee's principal activity.[66] On the other hand, if changing clothes is merely a convenience to the employee and not directly related to his principal activities, it would be considered as a ''preliminary'' or ''postliminary'' activity rather than a principal part of the activity.[67] However, activities such as checking in and out and waiting in line to do so would not ordinarily be regarded as integral parts of the principal activity or activities.[67]

[12 FR 7655, Nov, 18, 1947, as amended at 35 FR 7383, May 12, 1970]

§ 790.9 "Compensable * * * by an express provision of a written or nonwritten contract."

(a) Where an employee engages in a ''preliminary'' or ''postliminary'' activity of the kind described in section 4(a) of the Portal Act and this activity is ''compensable * * * by an express provision of a written or nonwritten contract'' applicable to the employment, section 4 does not operate to relieve the employer of liability or punishment under the Fair Labor Standards Act with respect to such activity,[68] and does not relieve the employer of any obligation he would otherwise have under that Act to include time spent in such activity in computing hours worked.[69]

(b) The word ''compensable,'' is used in subsections (b), (c), and (d) of section 4 without qualification.[70] It is apparent from these provisions that ''compensable'' as used in the statute, means compensable in any amount.[71]

(c) The phrase ''compensable by an express provision of a written or nonwritten contract'' in section 4(b) of the

[63] Statement of Senator Cooper, 93 Cong. Rec. 2297; colloquy between Senators Barkley and Cooper, 93 Cong. Rec. 2350. The fact that a period of 30 minutes was mentioned in the second example given by the committee does not mean that a different rule would apply where such preparatory activities take less time to perform. In a colloquy between Senators McGrath and Cooper, 93 Cong. Rec. 2298, Senator Cooper stated that ''There was no definite purpose in using the words '30 minutes' instead of 15 or 10 minutes or 5 minutes or any other number of minutes.'' In reply to questions, he indicated that any amount of time spent in preparatory activities of the types referred to in the examples would be regarded as a part of the employee's principal activity and within the compensable workday. Cf. *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U.S. 680, 693.

[64] See statements of Senator Cooper, 93 Cong. Rec. 2297–2299, 2377; colloquy between Senators Barkley and Cooper, 93 Cong. Rec. 2350.

[65] Such a situation may exist where the changing of clothes on the employer's premises is required by law, by rules of the employer, or by the nature of the work. See footnote 49.

[66] See colloquy between Senators Cooper and McGrath, 93 Cong. Rec. 2297–2298.

[67] See Senate Report, p. 47; statements of Senator Donnell, 93 Cong. Rec. 2305–2306, 2362; statements of Senator Cooper, 93 Cong. Rec. 2296–2297, 2298.

[68] See § 790.4.

[69] See §§ 790.5 and 790.7.

[70] The word is also so used throughout section 2 of the Act which relates to past claims. See §§ 790.28–790.25.

[71] Cf. Conference Report, pp. 9, 10, 12, 13; message of the President to the Congress on approval of the Portal-to-Portal Act, May 14, 1947 (93 Cong. Rec. 5281).

Portal Act offers no difficulty where a written contract states that compensation shall be paid for the specific activities in question, naming them in explicit terms or identifying them through any appropriate language. Such a provision clearly falls within the statutory description.[72] The existence or nonexistence of an express provision making an activity compensable is more difficult to determine in the case of a nonwritten contract since there may well be conflicting recollections as to the exact terms of the agreement. The words ''compensable by an express provision'' indicate that both the intent of the parties to contract with respect to the activity in question and their intent to provide compensation for the employee's performance of the activity must satisfactorily appear from the express terms of the agreement.

(d) An activity of an employee is not ''compensable by * * * a written or nonwritten contract'' within the meaning of section 4(b) of the Portal Act unless the contract making the activity compensable is one ''between such employee,[72] his agent, or collective-bargaining representative and his employer.''[73] Thus, a provision in a contract between a government agency and the employer, relating to compensation of the contractor's employees, would not in itself establish the compensability by ''contract'' of an activity, for purposes of section 4.

§ 790.10 "Compensable * * * by a custom or practice."

(a) A ''preliminary'' or ''postliminary'' activity of the type described in section 4(a) of the Portal Act may be ''compensable'' within the meaning of section 4(b), by a custom or practice as well as by a contract. If it is so compensable, the relief afforded by section 4 is not available to the employer with respect to such activity,[74] and section 4(d) does not operate to exclude the time spent in such activity from hours worked under the Fair Labor Standards Act.[75] Accordingly, in the event that no ''express provision of a written or nonwritten contract'' makes compensable the activity in question, it is necessary to determine whether the activity is made compensable by a custom or practice, not inconsistent with such a contract, in effect at the establishment or other place where the employee was employed.[76]

(b) The meaning of the word ''compensable'' is the same, for purposes of the statute, whether a contract or a custom or practice is involved.[77]

(c) The phrase, ''custom or practice,'' is one which, in common meaning, is rather broad in scope. The meaning of these words as used in the Portal Act is not stated in the statute; it must be ascertained from their context and from other available evidence of the Congressional intent, with such aid as may be had from the many judicial decisions interpreting the words ''custom'' and ''practice'' as used in other connections. Although the legislative history casts little light on the precise limits of these terms, it is believed that the Congressional reference to contract, custom or practice was a deliberate use of non-technical words which are commonly understood and broad enough to cover every normal situation under which an employee works or an employer for compensation.[78] Accordingly, ''custom'' and ''practice,'' as used in section 4(b) of the Portal Act, may be said to be descriptive generally of those situations where an employer, without being compelled to do so by an express provision

[72] See colloquy between Senators Donnell and Lodge, 93 Cong. Rec. 2178; colloquies between Senators Donnell and Hawkes, 93 Cong. Rec. 2179, 2181–2182.

[73] The terms ''employee'' and ''employer'' have the same meaning as when used in the Fair Labor Standards Act. Portal-to-Portal Act, section 13(a).

[74] See § 790.4.

[75] See §§ 790.5 and 790.7.

[76] See Senate Report, p. 49.

The same is true with respect to the activities referred to in section 2 of the Portal Act in an action or proceeding relating to activities performed before May 14, 1947. See Senate Report, p. 45. See also § 790.23.

[77] See § 790.9(b).

[78] See colloquy between Senators Donnell and Tydings, 93 Cong. Rec. 2125, 2126; colloquy between Senators Donnell, Lodge, and Hawkes, 93 Cong. Rec. 2178, 2179; colloquy between Senators Donnell and Hawkes, 93 Cong. Rec. 2181, 2182. Statements of Senator Cooper, 93 Cong. Rec. 2293.