

sought; and (c) any data available in support of the petition. Whenever a petitioner seeks 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 FR 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 “kick-backs”; 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 payments 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”

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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

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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