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 employees, 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