93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
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FAIR LABOR STANDARDS AMENDMENTS OF 1973

MAY 29, 1973.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor, submitted the following

REPORT

together with

MINORITY, SUPPORTING, SEPARATE MINORITY, and INDIVIDUAL VIEWS

[To accompany H.R. 7935]

The Committee on Education and Labor, to whom was referred the bill (H.R. 7935) to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rates under that Act, to expand the coverage of that Act, and for other purposes, having considered the same, report favorably thereon and recommend that the bill do pass.

INTRODUCTORY STATEMENT

The Fair Labor Standards Act of 1938 was enacted on June 25, 1938. The basic policy of the Act is contained in its second section:

> SEC. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standards of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.
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> (b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the condi-

tions above referred to in such industries without substantially curtailing employment or earning power.

PURPOSE OF THE LEGISLATION

The bill seeks to implement the policy of the Act by (1) providing an increase in the minimum wage rate, and (2) extending the benefits and protection of the Act to workers engaged in commerce or in the production of goods for commerce, or employed in enterprises engaged in commerce or in the production of goods for commerce.

The bill provides that the minimum wage rate for nonagricultural employees covered under the minimum wage provisions of the Act prior to the effective date of the 1966 amendments to the Act, and for Federal employees covered by the 1966 amendments, will be $2.00 an hour beginning on the first day of the second full month after the date of enactment, or August 1, 1973, whichever occurs first, and $2.20 an hour beginning July 1, 1974. The proposed minimum wage rate for nonagricultural employees covered under the minimum wage provisions of the Act by the 1966 and 1973 amendments will be $1.80 an hour beginning the first day of the second full month after the date of enactment, or August 1, 1973, whichever occurs first, $2.00 an hour beginning July 1, 1974, and $2.20 an hour beginning July 1, 1975. For agricultural employees covered under the minimum wage provisions of the Act, the minimum wage rate will be $1.60 an hour beginning the first day of the second full month after the date of enactment, or August 1, 1973, whichever occurs first, $1.80 an hour beginning July 1, 1974, $2.00 an hour beginning July 1, 1975, and $2.20 an hour beginning July 1, 1976. The minimum wage rates for hotel, motel, restaurant, food service, conglomerate, and certain public employees in Puerto Rico and the Virgin Islands, will be in accordance with those applicable to such employees in the United States. Other employees in Puerto Rico and the Virgin Islands presently covered by wage orders would be entitled to percentage increases in the wage orders generally based upon increases in the applicable U.S. minimum wage rate.

The wage increases provided by the bill were attuned to considerations of correcting and as rapidly as practicable eliminating labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers without substantially curtailing employment or earning power. It is firmly believed that these gradual and belated increases, approximately equivalent to productivity and cost-of-living increases in recent years, can be absorbed by the national economy as easily as all previous increases in the minimum wage rate.

Title II of the bill extends the minimum wage and overtime coverage of the Act to Federal, State and local government employees (the overtime exemption is maintained for Federal employees and State and local policemen and firemen), domestic service employees, and conglomerate employees. Overtime coverage is extended to agricultural processing employees, transit system employees, nursing home employees (a limited exemption is maintained), and maids and custodial employees in hotels and motels.

TABLE 1.—PROPOSED INCREASE IN THE MINIMUM WAGE RATE

Employee wage schedules	Hourly rate	Effective date
Nonagricultural employees covered under the minimum wage provisions of the Fair Labor Standards Act prior to the effective date of the 1966 amendments (including Federal employees covered by the 1966 amendments).	$2.00	1st day of the second full month after the date of enactment, or Aug. 1, 1973, whichever occurs first.
	2.20	July 1, 1974.
Nonagricultural employees covered under the minimum wage provisions of the Fair Labor Standards Act by the 1966 and 1973 amendments.	1.80	1st day of the second full month after the date of enactment, or Aug. 1, 1973, whichever occurs first.
	2.00	July 1, 1974.
	2.20	July 1, 1975.
Agricultural employees covered under the minimum wage provisions of the Fair Labor Standards Act.	1.60	1st day of the second full month after the date of enactment, or Aug. 1, 1973, whichever occurs first.
	1.80	July 1, 1974.
	2.00	July 1, 1975.
	2.20	July 1, 1976.
Hotel, motel, restaurant, food service, conglomerate, Federal and Virgin Islands government employees in Puerto Rico and the Virgin Islands.	(1)	
Other employees in Puerto Rico and the Virgin Islands presently covered by a wage order.	(2)	

[1] Identical coverage as that for counterparts in United States.
[2] Percentage increases in wage orders (see section-by-section analysis).

TABLE 2.—PROPOSED EXTENSION OF MINIMUM WAGE AND OVERTIME PROTECTION

Minimum wage coverage will be extended to the following:	Overtime coverage will be extended to the following:
Federal employees.	State and local employees.
State and local employees.	Domestic service employees.
Domestic service employees.	Conglomerate employees.
Conglomerate employees.	Agricultural processing employees.
	Transit system employees.
	Nursing home employees (modification of present exemption).
	Maids and custodial employees of hotels and motels.

COMMITTEE CONSIDERATION

Almost three years have elapsed since the General Subcommittee on Labor began considering legislation to raise the living standard of minimum wage workers whose depressed earnings confine them in poverty. The subcommittee commenced public hearings on bills amending the Fair Labor Standards Act on June 17, 1970. Hearings continued in 1970 for 17 days until September 17, and were resumed on April 20, 1971, for 7 additional days; two of which were conducted in San Juan, Puerto Rico, and dealt solely with the application of the minimum wage rate in Puerto Rico and the Virgin Islands. Testimony was received from a multitude of witnesses from government, labor, industry, business, and other interested groups and individuals.

After several days of informal discussions and formal mark-up sessions, the subcommittee, by a vote of 9–2, ordered a bill reported. Subsequently the Committee on Education and Labor considered the bill in open mark-up meetings and ordered the bill reported to the House by a vote of 26–7. The bill was amended and passed by the

House, but failed to be referred to a House-Senate Conference Committee.

The economic urgency for workers the legislation proposes to cover prompted the General Subcommittee on Labor to begin immediate consideration of legislation to amend the Fair Labor Standards Act in the 93rd Congress. The subcommittee held 4 days of hearings and received testimony from 16 public witnesses representing every segment of American business and labor which would be affected by the bill. The subcommittee also heard testimony from Congressional witnesses, and concluded its hearings on April 10, 1973, with the testimony of Secretary of Labor Peter J. Brennan who presented the Administration's minimum wage proposals. After several informal meetings, the subcommittee marked-up H.R. 4757 at a public meeting on May 2, 1973, and ordered the bill, as amended, reported to the Committee on Education and Labor.

On May 15, 1973, the Committee on Education and Labor ordered the bill H.R. 4757 reported, as amended. On May 22, 1973, the Committee—by a vote of 21 to 9—ordered reported H.R. 7935, a clean bill.

HISTORY OF THE ACT

On June 25, 1938, one of the Nation's basic labor laws was enacted—the Fair Labor Standards Act of 1938. The first statutory minimum wage was established at 25 cents an hour for the year beginning October 24, 1938. It was made applicable to all employees, not specifically exempted, who were engaged in commerce or in the production of goods for commerce.

The original Act provided that the statutory minimum wage would be raised to 30 cents an hour beginning October 24, 1939. A procedure was established for raising the minimum wage by stages to a level of 40 cents an hour, industry by industry, as rapidly as possible; but, in any case, 40 cents an hour was to become the national minimum wage within 7 years after the effective date of the Act; that is, by October 24, 1945.

During the interval, intermediate minimum wages were applied to different industries on recommendation of industry committees. The last order of the Wage and Hour Administrator raising the minimum wage to 40 cents an hour was issued in July 1944, 1 year before the date set by the Act for the 40 cents an hour minimum wage rate to become applicable.

The Act also established an overtime rate (not less than 1½ times the employee's regular hourly rate) which was to be paid employees for employment in excess of certain maximum hours in a workweek. Thus, during the first year of the Act, that is, from October 24, 1938, to October 23, 1939, a maximum hours standard of 44 hours a week was applied to covered employees; during the second year, 42 hours became the standard; and after 2 years, the standard was reduced to 40 hours a week. The time-and-one-half penalty overtime rate has never been altered, although amendments were passed in subsequent years increasing the statutory minimum wage and extending coverage to unprotected workers.

The Fair Labor Standards Amendments of 1949 increased the minimum hourly wage rate from 40 cents to 75 cents (to take effect Janu-

ary 25, 1950), representing an 87½ percent raise. The Fair Labor Standards Amendments of 1955 provided another increase in the minimum hourly wage rate which brought that wage rate to $1 an hour effective March 1, 1956, representing a 33⅓ percent increase.

The Fair Labor Standards Amendments of 1961 raised the minimum hourly wage rate by 25 percent to $1.25, effective on September 3, 1963. An intermediate increase to $1.15 an hour was provided effective September 3, 1961. Employees covered by the Act for the first time because of the changes made in the Act by the 1961 amendments, which revised the exemptions and extended the Act's coverage, received a minimum wage of not less than $1 an hour beginning September 3, 1961; $1.15 an hour beginning September 3, 1964; and $1.25 an hour beginning September 3, 1965. Employees brought within the coverage of the Act by the 1961 amendments received overtime protection beginning September 3, 1963, for hours worked in excess of 44 in any workweek. Effective September 3, 1964, the overtime protection of the Act was extended to such employees for hours worked in excess of 42 in any workweek, and effective September 3, 1965, for hours worked in excess of 40 in any workweek.

Prior to the 1961 amendments, coverage under the Act was limited to individual employees who were themselves engaged in commerce or in the production of goods for commerce or in any closely related process or occupation directly essential to production. The 1961 amendments enlarged the scope of the Act by adding another basis of coverage—employment in an "enterprise engaged in commerce or in the production of goods for commerce." Under this basis of coverage the minimum wage and overtime protection of the Act was extended to each and every employee of such an enterprise, unless specifically exempted.

The Fair Labor Standards Amendments of 1966 increased the minimum hourly wage rate by 28 percent to $1.60, effective on February 1, 1968. An intermediate increase to $1.40 an hour was provided effective February 1, 1967. Employees covered under the minimum wage provisions of the Act for the first time by the 1966 amendments, which also revised the exemptions and extended the Act's coverage, were provided a minimum rate of not less than $1 an hour beginning February 1, 1967; $1.15 an hour beginning February 1, 1968; $1.30 an hour beginning February 1, 1969; $1.45 an hour beginning February 1, 1970; and $1.60 an hour beginning February 1, 1971. Newly covered agricultural employees were provided a minimum wage rate of not less than $1 an hour beginning February 1, 1967; $1.15 an hour beginning February 1, 1968; and $1.30 an hour beginning February 1, 1969. Employees brought within the overtime protection of the Act by the 1966 amendments received overtime compensation beginning February 1, 1967, for hours worked in excess of 44 in any workweek; beginning February 1, 1968, for hours worked in excess of 42 in any workweek; and effective February 1, 1969, for hours worked in excess of 40 in any workweek.

In addition to extending the protection of the Act to large groups of employees employed in private activities which had theretofore been completely exempt from coverage—such as agriculture—the 1966 amendments were particularly notable for their inclusion of public employees within the parameter of the Act. A significant number of

Federal employees were then covered, but the 1966 amendments also extended coverage to public employees employed in hospitals and related institutions, schools and institutions of higher education, and local transit operations.

In *Maryland et. al.* v. *Wirtz, Secretary of Labor, et. al.*, the Supreme Court considered the contention of appellants—28 States and a school district—who sought to enjoin enforcement of the Act as it applies to schools and hospitals operated by the States or their subdivisions. Appellants argued that the "enterprise concept" of coverage and the inclusion of State-operated hospitals and schools were beyond Congress' power under the Commerce Clause, that the remedial provisions of the Act, if applied to states, would conflict with the Eleventh Amendment, and that school and hospital enterprises do not have the statutorily required relationship to interstate commerce. A three-judge district court declined to issue a declaratory judgment or an injunction and concluded that the adoption of the "enterprise concept" and the extension of coverage to State institutions do not, on the face of the Act, exceed Congress' commerce power. That court declined to consider the Eleventh Amendment and statutory relationship contentions.

The Supreme Court affirmed the judgment of the lower court and held:

1. The "enterprise concept" of coverage is clearly within the power of Congress under the Commerce Clause.

(a) A rational basis for Congress' finding the scheme necessary to the protection of commerce was the logical inference that the pay and hours of employees of an interstate business who are not production workers, as well as those who are, affect an employer's competition with companies elsewhere. *United States* v. *Darby*, 312 U.S. 100, followed.

(b) Another rational basis is the promotion of labor peace by the regulation of wages and hours, subjects of frequent labor disputes.

(c) The class of employers subject to the Act, approved in *Darby, supra*, was not enlarged by the addition of the "enterprise concept."

2. The commerce power provides a constitutional basis for extension of the Act to State-operated schools and hospitals.

(a) Congress has "interfered with" state functions only to the extent that it subjects a State to the same minimum wage and overtime pay limitations as other employers whose activities affect commerce.

(b) Labor conditions in schools and hospitals can affect commerce and are within the reach of the commerce power.

(c) Where a State is engaging in economic activities that are validly regulated by the Federal Government when engaged in by private persons, the State may be forced to conform its activities to Federal regulation. *United States* v. *California*, 297 U.S. 175.

3. Questions concerning the States' sovereign immunity from suit and whether particular State-operated institutions have employees handling goods in commerce are reserved for appropriate concrete cases.

With reference to the objectives of the Act, the Supreme Court, speaking through Mr. Justice Burton, has observed:

> In this Act, the primary purpose of Congress was not to regulate interstate commerce as such. It was to eliminate, as rapidly as practicable, substandard labor conditions throughout the Nation. It sought to raise living standards without substantially curtailing employment or earning power. * * *
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> The Act declared its purposes in bold and sweeping terms. Breadth of coverage was vital to its mission. Its scope was stated in terms of substantial universality * * * (*Powell* v. *United States Cartridge Co.*, 339 U.S. 497 at 509–510, 516 (1950)).

In contrast with the broad objectives of the Act its present coverage is much more confined in scope.

The Act was a response to call upon a Nation's conscience, at a time when the challenge to our democracy was the tens of millions of citizens who were denied the greater part of what the very lowest standards of the day called the necessities of life; when millions of families in the midst of a great depression were trying to live on income so meager that the pall of family disaster hung over them day by day; when millions were denied education, recreation, and the opportunity to better their lot and the lot of their children; when millions lacked the means to buy the products of farm and factory and by their poverty denied work and productiveness to many other millions; and when one-third of a nation was ill housed, ill clad, and ill nourished.

On May 24, 1937, in a message to the Congress, President Franklin D. Roosevelt, stated that—

> Our Nation so richly endowed with natural resources and with a capable and industrious population should be able to devise ways and means of insuring to all our able-bodied working men and women a fair day's pay for a fair day's work. A self-supporting and self-respecting democracy can plead no justification for the existence of child labor, no economic reason for chiseling workers' wages or stretching workers' hours.
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> Enlightened business is learning that competition ought not to cause bad social consequences which inevitably react upon the profits of business itself. All but the hopelessly reactionary will agree that to conserve our primary resources of manpower, Government must have some control over maximum hours, minimum wages, the evil of child labor, and the exploitation of unorganized labor.
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> And so to protect the fundamental interests of free labor and a free people we propose that only goods which have been produced under conditions which meet the minimum standards of free labor shall be admitted to interstate commerce. Goods produced under conditions which do not meet rudimentary standards of decency should be regarded as contraband and ought not to be allowed to pollute the channels of interstate trade.

On October 26, 1949, upon the occasion of the signing of the Fair Labor Standards Amendments of 1949, President Harry S Truman stated:

> This Act has proved to be wise and progressive remedial legislation for the welfare not only of our wage earners but of our whole economy.

On April 21, 1960, while appearing before the Subcommittee on Labor Standards of the Committee on Education and Labor, House of Representatives, the Honorable James P. Mitchell, Secretary of Labor, cited President Dwight D. Eisenhower's continuing support for this basic legislation. Secretary Mitchell stated:

> In his first economic report issued in January 1954, President Eisenhower said that "an effective minimum wage program should cover millions of low-paid workers now exempted."
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> In his 1955 report, the President indicated that "the coverage of the minimum wage is no less important than its amount."
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> In 1956, he stated that "the need for an extension of coverage remains, and the Congress is again requested to proceed as far as is practical in this direction."
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> This request was repeated in 1957, 1958, and 1959, and in his last report the President reiterated that "the Congress is again requested to extend coverage of the Fair Labor Standards Act to several million workers not now receiving its protection."

In a special message to the Congress on February 2, 1961, President John F. Kennedy recommended a minimum wage increase and expanded coverage of the Fair Labor Standards Act of 1938. President Kennedy declared:

> This will improve the income, level of living, morale, and efficiency of many of our lowest paid workers, and provide incentives for their more productive utilization. This can actually increase productivity and hold down unit costs, with no adverse effects on our competition in world markets and our balance of payments.

Now in its fourth decade the Act has meant much to many—greater dignity and security and economic freedom for millions of American workers, and an upswing in economic growth for the country as a whole.

However, as President Lyndon B. Johnson stated in his message to the Congress of May 18, 1965:

> Many American workers whose employment is clearly within the reach of this law have never enjoyed its benefits. Unfortunately, these workers are generally in the lowest wage groups and most in need of wage and hour protection. We must extend minimum wage and overtime protection to them.

It is the committee's intention to extend the Act's coverage in such a manner as to completely assume the Federal responsibility insofar as is presently practicable and to raise the minimum wage to a level which will prevent the disgraceful and intolerable situation of workers and their families dwelling in poverty.

THE PRESENT ACT

At the present time, about 40 percent of the Nation's wage and salary workers in the civilian labor force are outside the coverage of the Act. The law presently covers only 46.9 million of the nearly 77.3 million wage and salary workers in the United States. A substantial number of these 77.3 million are beyond the scope of the Act's practical, possible, or needed coverage. More than 13 million, for instance, are executive, administrative, or professional personnel; for whom the minimum wage provisions of the Act would have little relevance. But of the remainder—some 64 million—who might be brought within the wage and hour guarantees, over 16 million are not in fact covered.

TABLE 3.—ESTIMATED NUMBER OF NONSUPERVISORY EMPLOYEES COVERED UNDER THE FAIR LABOR STANDARDS ACT, BY INDUSTRY

[In thousands]

Industry	Total number of employees in industry	Number of employees covered	Number of employees not covered or exempt
Agriculture	1,199	485	714
Mining	547	542	5
Contract construction	3,481	3,462	19
Manufacturing	17,356	16,788	568
Transportation, communications, utilities	4,080	3,991	89
Wholesale trade	3,387	2,576	811
Retail trade	10,731	6,611	4,120
Finance, insurance, real estate	3,395	2,577	818
Services (excluding domestic service)	9,167	6,465	2,702
Domestic service	2,063	0	2,063
Federal Government	2,333	636	1,697
State and local government	6,150	2,817	3,333
Total	63,889	46,950	16,939

About 2 million of those not covered are exempt as "outside salesmen" under section 13(a)(1) of the Act. Some others are in occupations where wage rates are already higher than any practical minimum wage level or where hours of service are already compensated, at least in accordance with the overtime requirements of the Act. But it is evident that a sizeable number of American workers continue to be denied the most basic protection afforded by the Act.

BRIEF SUMMARY OF PROVISIONS

SECTION 1. *Short Title.*—Provides that the act may be cited as the "Fair Labor Standards Amendments of 1973."

Title I—Increases in Minimum Wage Rates

SECS. 101 AND 102.—*Nonagricultural Employees.*—Provides a minimum wage rate for nonagricultural employees covered by the Act prior to the effective date of the 1966 amendments, and Federal employees covered by the 1966 amendments, of not less than $2 an hour beginning on the first day of the second full month after the date of enactment, or August 1, 1973, whichever occurs first, and not less than $2.20 an hour beginning July 1, 1974.

Provides a minimum wage rate for nonagricultural employees covered by the 1966 and 1973 amendments to the Act of not less than $1.80 an hour beginning on the first day of the second full month after the date of enactment, or August 1, 1973, whichever occurs first, not less than $2 an hour beginning July 1, 1974, and not less than $2.20 an hour beginning July 1, 1975.

SEC. 103. *Agricultural Employees.*—Provides a minimum wage rate for agricultural employees covered by the Act of not less than $1.60 an hour beginning on the first day of the second full month after the date of enactment, or August 1, 1973, whichever occurs first, not less than $1.80 an hour beginning July 1, 1974, not less than $2.00 an hour beginning July 1, 1975, and not less than $2.20 an hour beginning July 1, 1976.

SEC. 104. *Government, Hotel, Motel, Restaurant, Food Service, and Conglomerate Employees in Puerto Rico and the Virgin Islands.*—The minimum wage rate for hotel, motel, restaurant, food service, conglomerate, and Government of the United States and the Virgin Islands employees in Puerto Rico and the Virgin Islands shall be in accordance with the applicable rate in the United States.

SEC. 105. *Other Employees in Puerto Rico and the Virgin Islands.*—Provides for a 25 per centum increase in the most recent wage order applicable to an employee in Puerto Rico or the Virgin Islands covered by the Act prior to the 1966 amendments. Such increase shall generally become effective 60 days after the effective date of the 1973 amendments or 1 year from the effective date of the most recent wage order, whichever is later.

Provides, 1 year thereafter, for a 12.5 per centum increase in the most recent applicable wage order.

Provides for a 15.4 per centum increase in the most recent wage order applicable to an agricultural employee in Puerto Rico or the Virgin Islands covered by the Act. Such increase shall generally become effective 60 days after the effective date of the 1973 amendments or 1 year from the date of the most recent wage order, whichever is later. Provides an additional 15.4 per centum increase in the most recent wage order 1 year later, and a further 15.4 per centum increase in the most recent wage order 1 year thereafter.

In the case of an agricultural employee whose hourly wage is increased (above that required by wage order) by a subsidy paid, in whole or in part, by the Government of Puerto Rico, the per centum increase shall be applied to the sum of (1) the wage rate and (2) the amount of the subsidy.

For nonagricultural employees covered by the 1966 amendments, provides three 12.5 per centum increases in the most recent wage orders, the first increase to be generally effective 60 days after the effective date of the 1973 amendments or 1 year from the effective date of the most recent wage order, whichever is later; the second increase 1 year later; and the third increase 1 year thereafter.

Provides for the establishment of special industry committees to recommend minimum wage rates for employees newly covered by the 1973 amendments (other than employees described in section 104). Also requires that all special industry committees recommend the minimum wage rate applicable in the United States except where

pertinent financial information demonstrates inability to pay such rate.

Retains the review procedure first established by the 1961 amendments. This procedure permits any employer, or group of employers, employing a majority of the employees in an industry in Puerto Rico or the Virgin Islands to petition the Secretary for the appointment of a special industry committee to recommend the minimum wage rate or rates to be paid such employees in lieu of the rate or rates required as a result of the percentage increase. The Secretary may then appoint a special industry committee if he has reasonable cause to believe that employment in such industry will otherwise be substantially curtailed.

Provides further that, notwithstanding any other provision, no wage rate for covered employees may be less than 60 per centum of the minimum wage rate applicable to counterpart employees in the United States.

Title II—Extension of Coverage: Revision of Exemptions

SEC. 201. *Federal and State Employees.*—Amends the definitions of "employer," "enterprise," and "enterprise engaged in commerce or in the production of goods for commerce," to include the United States and any State or political subdivision of a State; thereby permitting the extension of minimum wage and overtime coverage to all Federal, State, and local public employees. Federal employees (except those covered by the 1966 amendments), and State and local public employees engaged in fire protection or law enforcement activities, are exempt from overtime coverage.

SEC. 202. *Transit Employees.*—Reduces the overtime exemption for any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motor bus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency. During the first year after the effective date of the 1973 amendments, overtime compensation must be paid to such employees for hours worked in excess of 48 per week; during the second year, for hours worked in excess of 44 per week; and thereafter, for hours worked in excess 42 per week. In determining the hours of employment of such an employee, hours employed in charter activities shall not be included if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee's regular employment.

SEC. 203. *Nursing Home Employees.*—Amends the overtime exemption for nursing home employees to provide an overtime exemption for employment up to 8 hours in any workday and up to 80 hours in any 14-consecutive-day work period. This coverage is identical to that for hospital employees. The present overtime exemption for nursing home employees is for employment up to 48 hours in any workweek.

SEC. 204. *Seasonal Industry Employees.*—Reduces and ultimately repeals the overtime exemption for employees in seasonal industries and agricultural processing. Existing law provides an overtime exemption for employment in seasonal industries up to 10 hours in any workday or 50 hours in any workweek for not more than 10 workweeks during the calendar year. Existing law also provides an overtime ex-

emption for employment in agricultural processing up to 10 hours in any workday or 48 hours in any workweek for not more than 10 workweeks during the calendar year. In the case of an employer who does not qualify for the overtime exemption under both categories, the exemption is extended to 14 workweeks during the calendar year for the category under which he does qualify.

This section reduces the overtime exemption for employment in seasonal industries to 9 hours in any workday or 48 hours in any workweek for not more than 7 workweeks during the first year after the effective date of the 1973 amendments and for not more than 5 workweeks during the second year. The overtime exemption for employment in agricultural processing is reduced to 9 hours in any workday (the 48 hours per week limitation in existing law is not affected) for not more than 7 workweeks during the first year after the effective date of the 1973 amendments and for not more than 5 workweeks during the second year. In the case of an employer who does not qualify for the overtime exemption under both categories, the exemption is reduced from 14 workweeks during the calendar year to 10 workweeks during the first year after the effective date of the 1973 amendments and 7 workweeks during the second year. Effective 2 years after the effective date of the 1973 amendments the overtime exemptions are repealed.

SEC. 205. *Domestic Service Employees Employed in Households.*—States a finding of Congress that domestic service in households directly affects commerce and that the minimum wage and overtime protections of the Act should have been available to such employees since its enactment. This section prescribes therefore, the minimum wage (not less than $1.80 an hour beginning on the first day of the second full month after the date of enactment, or August 1, 1973, whichever occurs first, not less than $2 an hour beginning July 1, 1974, and not less than $2.20 an hour beginning July 1, 1975) and overtime (compensation for hours worked in excess of 40 per week) rates applicable to such employees. The provision is not applicable in the case of any such employee who resides in the household of his employer. Domestic service employees are described as those whose compensation for services constitutes "wages" under section 209 of the Social Security Act.

SEC. 206. *Employment of Students.*—Provides for the employment of full-time students (regardless of age but in compliance with applicable child labor laws) at wage rates less than those prescribed by the Act in any occupation other than an occupation listed in the section or one determined by the Secretary to be particularly hazardous for the employment of such students. Students may be employed at a wage rate of not less than 85 per centum of the applicable minimum wage rate or $1.60 an hour ($1.30 an hour in the case of employment in agriculture), whichever is the higher, pursuant to special certificates issued by the Secretary. Such special certificates shall provide that such students shall, except during vacation periods, be employed on a part-time basis (not to exceed 20 hours in any workweek). In the case of an employer who intends to employ five or more students under this section, the Secretary may not issue a special certificate unless he finds the employment of any such student "will not create a substantial probability of reducing the full-time employment opportunities" of other

workers. In the case of an employer who intends to employ less than five students under this section, the Secretary may issue a special certificate if the employer certifies to the Secretary that he is not thereby reducing the full-time employment opportunities for other workers. Sections 15 (Prohibited Acts) and 16 (Penalties) of the Act would be applicable to an employer who violated the requirements of this section. A summary of the special certificates issued under this provision is required to be included in the Secretary's annual report on the Act.

Section 206 also provides that the Secretary may waive the minimum wage and overtime provisions of the Act with respect to a student employed by his elementary or secondary school, where such employment constitutes an integral part of the regular education program provided by the school.

SEC. 207. *Laundry and Cleaning Establishments to be Considered Service Establishments for Certain Purposes.*—Requires the consideration of laundries and dry cleaning establishments as service establishments in the administration of sections 7(i) (relating to commission employees) and 13(a)(1) (relating to executive and administrative personnel and outside salesmen) of the Act.

SEC. 208. *Maids and Custodial Employees of Hotels and Motels.*—Extends overtime coverage to maids and custodial employees of hotels and motels.

SEC. 209. *Employees of Conglomerates.*—Precludes the availability of the minimum wage and overtime exemptions of section 13 of the Act (except those relating to employees in executive, administrative, or professional capacities, or in the capacity of outside salesmen, and the overtime exemptions relating to employees whose hours of service are subject to the provisions of the Motor Carrier Act, Interstate Commerce Act, or Railway Labor Act) to conglomerates with an annual gross volume of sales made or business done in excess of $10 million. The exemptions then, shall not apply with respect to any employee employed by "an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $10 million (exclusive of excise taxes at the retail level which are separately stated)."

SEC. 210. *Employees of Boat Dealers.*—Provides an overtime exemption for any salesman, partsman, or mechanic primarily engaged in selling or servicing boats if employed by a nonmanufacturing establishment primarily engaged in the business of selling boats to ultimate purchasers. Existing law provides an overtime exemption for employees engaged in related activities and employed by automobile, trailer, truck, farm implement, or aircraft dealerships.

SEC. 211. *Tobacco Employees.*—Retains an overtime exemption applicable to certain employees engaged in activities related to the sale of tobacco. The exemption would otherwise be reduced and ultimately repealed by section 204 (seasonal industry employees).

SEC. 212. *Substitute Parents for Institutionalized Children.*—Establishes an exemption from the minimum wage and overtime compensation provisions of the Act for an employee who is employed with his spouse by a nonprofit educational institution to serve as parents to children who have been placed in such institution by or through a public agency or by parents or guardians who are financially unable to care for and educate their children or children under their guardianship. The substitute parents must also meet certain other requirements.

Title III—Conforming Amendments: Effective Date and Regulations

SEC. 301. *Conforming Amendments.*

SEC. 302. *Effective Date and Regulations.*—Provides that unless otherwise indicated, the effective date of the 1973 amendments shall be the first day of the second full month which begins after the date of enactment, or August 1, 1973, whichever occurs first.

COMMENTS ON MAJOR PROVISIONS

INCREASE IN THE MINIMUM WAGE RATE FOR EMPLOYEES COVERED UNDER THE ACT PRIOR TO THE 1966 AMENDMENTS: JUSTIFICATION FOR INCREASES IN MINIMUM WAGE RATES

More than 35 million nonsupervisory employees at work in September 1972 [1] were in establishments covered prior to the 1966 amendments and have been subject to the $1.60 minimum wage rate since February 1, 1968. For these employees, and the 636,000 Federal employees covered by the 1966 amendments, the bill proposes increases in the minimum wage rate to $2.00 an hour effective on the first day of the second full month after the date of enactment, or August 1, 1973, whichever occurs first, and $2.20 an hour effective July 1, 1974.

TABLE 4.—ESTIMATED NUMBER OF NONSUPERVISORY EMPLOYEES COVERED UNDER THE FAIR LABOR STANDARDS ACT PRIOR TO THE EFFECTIVE DATE OF THE 1966 AMENDMENTS, BY INDUSTRY

[In thousands]

Industry	Total number of employees in industry	Number of employees covered prior to 1966 amendments
Agriculture	1,199	0
Mining	547	542
Contract construction	3,481	2,854
Manufacturing	17,356	16,724
Transportation, communications, utilities	4,080	3,893
Wholesale trade	3,387	2,456
Retail trade	10,731	3,736
Finance, insurance, real estate	3,395	2,488
Services (excluding domestic service)	9,167	2,466
Domestic service	2,063	0
Federal Government	2,333	0
State and local government	6,150	0
Total	63,889	35,159

[1] The most recent date for which all such data are available.

The impact of a $2.00 an hour minimum wage rate would be felt by slightly more than 5 per cent of the 35,159,000 employees covered by the Act prior to the effective date of the 1966 amendments; or, by an estimated 1,856,000 employees. These are employees who are now earning less than $2.00 an hour. Only 54,000 of the 636,000 Federal employees covered by the 1966 amendments would feel the impact of a $2.00 an hour minimum wage rate.

The impact of a $2.20 an hour minimum wage rate—effective July 1, 1974—would mean wage increases for an estimated 2,618,000 private sector employees (covered by the Act prior to the effective date of the 1966 amendments) and 64,000 Federal employees (covered by the 1966 amendments) who, at that time, will be earning less than $2.20 an hour.

When the 1966 amendments—increasing the minimum wage rate to $1.60 an hour—were enacted, they represented a promise that a full-time worker compensated at the minimum wage rate could at least earn what was considered to be the poverty level of income; which at that time was about $3,200 annually for a family of four ($1.60 an hour × 40 hours per week × 50 weeks per year=$3,200 annually). Since then, increases in the price level as reflected in the Consumer Price Index have reflected the bankruptcy of that promise.

The Department of Labor early this year redefined the poverty threshold for a nonfarm family of 4 in the Continental U.S. to $4,200 in annual *net* income. A minimum wage earner working 40 hours per week for 50 weeks during the year receives $3,200 in annual *gross* income. In Hawaii, the poverty threshold for that same family is $4,850 in annual *net* income. In Alaska, it is $5,250.

The poverty threshold for a farm family of 4 in the Continental U.S. is $3,575 in annual *net* income. A minimum wage earner in agriculture, working 40 hours per week for 50 weeks during the year, receives $2,600 in annual *gross* income. In Hawaii, the poverty threshold for the same farm family is $4,125 in annual *net* income. In Alaska, it is $4,475.

The bill proposes an initial minimum wage increase to $2.00 an hour for nonagricultural workers covered by the Act prior to the 1966 amendments. That rate will yield (on a 40 hours per week/50 weeks per year employment basis) an annual *gross* income for covered workers of $4,000—some $200 below the annual *net* income deemed the poverty threshold for a family of 4 in the Continental U.S.; $850 below that poverty threshold in Hawaii; and $1,250 below that threshold in Alaska.

For nonagricultural workers covered by the 1966 amendments, the differences are more significant since the bill proposes an initial minimum wage increase to only $1.80 an hour.

For covered agricultural workers, the bill proposes an initial minimum wage increase to $1.60 an hour. That rate will yield an annual *gross* income for full-time workers of $3,200—some $375 below the annual *net* income deemed the poverty threshold for a farm family of 4 in the Continental U.S.; $925 below that poverty threshold in Hawaii; and $1,275 below that threshold in Alaska.

These differentials become more exaggerated when increases in the Consumer Price Index (CPI) since the Labor Department's redefinition of the poverty threshold are considered. Moreover, if income is

from gainful employment, financial considerations for the payment of Social Security and Federal, State, and local income and other taxes must be taken into account, bringing the annual income requirement for subsistence at the poverty threshold to well above Government defined levels.

With respect to increases in the cost-of-living, as reflected by changes in the CPI, it is significant that the annual average of the CPI for all items in 1972 was 125.3. The relevant index for March 1973 was 129.8. The base year index of 100 was 1967—the year the 1966 amendments to the Act became fully effective. For food and housing, about all a minimum wage earner can hope to afford, the March 1973 indices were 134.8 and 132.3, respectively.

These indices reflect a depreciation in the relative economic position of a minimum wage earner to a level below the $1.25 minimum wage rate applicable before the 1966 amendments to the Act. In summary, today's minimum wage of $1.60 buys less than the $1.25 minimum wage bought in 1966.

TABLE 5.—BUYING POWER OF MINIMUM WAGE RATES SET BY 1966 AMENDMENTS

Effective date	Previously covered		Newly covered (nonfarm)		Farmworkers		CPI (1967=100)	[1] Cumulative percent inflation from date of enactment September 1966
	Minimum wage rate	Buying power	Minimum wage rate	Buying power	Minimum wage rate	Buying power		
Feb. 1, 1967	1.40	1.39	1.00	.99	1.00	.99	98.7	0.6
Feb. 1, 1968	1.60	1.53	1.15	1.10	1.15	1.10	102.3	4.3
Feb. 1, 1969	1.60	1.47	1.30	1.19	1.30	1.19	107.1	9.2
Feb. 1, 1970	1.60	1.38	1.45	1.25	1.30	1.12	113.9	16.1
Feb. 1, 1971	1.60	1.31	1.60	1.31	1.30	1.07	119.4	21.7
Feb. 1, 1972	1.60	1.27	1.60	1.27	1.30	1.03	123.8	26.2
Feb. 1, 1973	1.60	1.22	1.60	1.22	1.30	.99	128.6	31.1

[1] CPI=98.1 upon enactment of FLSA Amendments of September 1966.

Stated differently, if a cost-of-living increase mechanism had been incorporated into the 1966 amendments, the minimum wage rate in March 1973 would have exceeded $2.07 an hour.

A complete Congressional perspective also compels notice to pay increases granted Federal employees since the 1966 amendments increased the minimum wage rate to $1.60 an hour. In 1966, a Federal employee (GS-2) earned $3,925 annually. After increases mandated by the Congress, that Federal employee now earns $5,432 annually—an increase of more than 38 per cent. A GS-16 level Federal employee in 1966 earned $20,075 annually. Today, he earns $31,203—an increase of 55.8 per cent. Generally, if the same cost-of-living and comparability increases Congress approved for Federal employees had been applied to minimum wage earners, today's minimum wage rate would well exceed $2.20 an hour.

The Fair Labor Standards Act is irrelevant to contemporary economic realities. An increase in the minimum wage rate to $2.00 an hour is required—virtually immediately—if only on the basis of simple economic fact. Even at that level, a full-time worker would earn less

than the poverty threshold and enjoy less buying power than he did before his wage was increased to its present $1.60 an hour rate. An increase in the minimum wage rate to $2.20 an hour will permit him, assuming essentially no additional increases in the cost-of-living, to recapture some of the economic value his wage entitled him to in 1966.

One of the traditional charges against proposed increases in the minimum wage rate—especially during periods of prolonged inflation—is that such increases further aggravate the inflationary trend. The committee is pleased to note that a spokesman for the U.S. Chamber of Commerce, in testimony before the Senate Subcommittee on Labor on related legislation, did not associate that organization with the charge. At that time, Dr. Richard S. Landry, Administrative Director, Economic Analysis and Study Group, U.S. Chamber of Commerce, said in response to a statement by the Chairman of the subcommittee:

> We do not contend, unlike some of the witnesses that appeared before you apparently, that the minimum wage is inflationary. Quite the opposite. Inflation is not caused by minimum wages. * * *

In actual fact, inflation adversely affects the lowest income worker—including minimum wage earners—more harshly than any other. He is its sorriest victim.

As one witness testified:

> We do not believe any employed workers should be forced to go on welfare in order to survive.
>
> These people work hard at useful jobs; struggle to maintain their economic independence and self-dignity; and attempt to achieve self-reliance against overwhelming odds. Yet they are paid less than a subsistence wage.

No fewer than 20 states and the District of Columbia provide higher amounts in welfare payments plus food stamps to a family of four, than the minimum wage rate provides to that family's breadwinner. Twelve of these States provide higher annual cash welfare payments than the yearly earnings of minimum wage workers, irrespective of food stamp considerations.

States whose cash welfare payments are higher:

Alaska, Connecticut, Illinois, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Pennsylvania, South Dakota, Vermont, and Washington.

States whose cash welfare payments and food stamps are higher:

District of Columbia, Hawaii, Idaho, Iowa, Kansas, Michigan, North Dakota, Rhode Island, and Virginia.

Under legislation passed by the House of Representatives in the last Congress, most full-time workers employed at the current minimum wage rate would be eligible for welfare benefits.

The committee, however, subscribes to the preceding witness' conclusion that the "simplest, most direct and least expensive way to eliminate most poverty is to modernize the Fair Labor Standards Act."

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Another charge against proposed increases in the minimum wage rate is that such increases create unemployment. Section 4(d) of the Act requires an annual report by the Secretary of Labor, which report "shall contain an evaluation and appraisal by the Secretary of the minimum wages established by this Act . . ." Reports by Secretaries of Labor—in all administrations—have shown substantial benefits and only rare, isolated instances of adverse effects.

Former Secretary of Labor Hodgson, in his January 1971 report to the Congress evaluating minimum wage legislation, stated:

> Although the economic indicators just noted increased at a fairly rapid rate in the year in which the Federal minimum wage for the newly covered group was raised 15 cents, it is significant that employment in retail trade and services—the industries where the newly covered group is largely concentrated and hence most likely to manifest some impact from the wage increase—fared better than industries unaffected by the statutory escalation in the minimum wage.

He concluded his summary with this statement:

> In view of overall economic trends, it is doubtful whether changes in the minimum had any substantial impact on wage, price or employment trends. Of much greater significance, however, is the fact that the 15-cent boost did help 2 million workers recover some of the purchasing power eroded by the steady upward movement of prices which had started even before the enactment of the 1966 amendments.

In the 4(d) report transmitted to the Congress in 1970 by the then Secretary of Labor George P. Shultz, a similar conclusion was drawn. With respect to the employment effects of the 1966 amendments, this report stated:

> There was continued economic growth during the period covering the third phase of the minimum wage and maximum hours standards established by the Fair Labor Standards Amendments of 1966. Total employment on nonagricultural payrolls (seasonally adjusted) rose in 28 out of the 32 consecutive months between January 1967 and September 1969. In the most recent 12-month period, employment climbed 3.2 percent, from 68.2 million in September 1968 to 70.4 million in September 1969. Employment rose in all major nonagricultural industry divisions in the 12-month period between September 1968 and September 1969. In the retail, services and State and local government sectors—where the minimum wage had its greatest impact in 1969, since only newly covered workers were slated for Federal minimum wage increases—employment rose substantially.

With respect to price effects Secretary Shultz stated:

> The steady upward movement of prices during the period studied reflects a continuation of the rising trend in prices which was in motion prior to the enactment of the 1966

> amendments. There are strong indications that other factors, although possibly not entirely exclusive of minimum wage escalations, were major causes of price increases occurring during the period studied.

In the previous administration, former Secretary of Labor Willard Wirtz, in his 1969 4(d) report, drew substantially the same conclusions. Regarding the impact of the 1966 amendments, Secretary Wirtz stated:

> The increased minimum wage levels set in 1966 have not contributed to the current inflationary spiral to an extent which permits reasonable questioning of their net value in strengthening both the position of low-paid workers in particular and the economy in general.

And, with respect to expanded coverage in schools and hospitals newly provided for in 1966, the Shultz report stated:

> Overall it can be stated that educational and hospital sectors have had little evident difficulty adjusting to minimum wages established by the 1966 amendments.

In the 1971 report of the Secretary, however, is historical data on the relationship between the minimum wage and average hourly earnings. As the report states:

> * * * minimum wages have been traditionally compared to gross average hourly earnings of production workers in manufacturing for purposes of evaluating the efficacy or desirability of changes in the level of the FLSA minimum, or of assessing the effects of legislative changes.

With respect to this comparison, the report concluded that:

> The relationship between the minimum wage and average hourly earnings or average hourly compensation varies, depending upon whether account is taken of changes in coverage. Although the minimum wage has been increased substantially, its ratio to earnings has been largely eroded by gains in average hourly earnings between the periods of increases in the minimum wage. *Consequently, the ratio of the minimum wage to average hourly earnings or to average hourly compensation per man hour is now lower than it was in 1950, when the 1949 amendments went into effect.* (Emphasis supplied.)

That report was the most recent to explicitly relate the minimum wage rate to average hourly earnings. But it is evident from the economic facts available that the disparity has become even more dramatic during the interval.

INCREASE IN THE MINIMUM WAGE RATE FOR EMPLOYEES COVERED UNDER THE ACT BY THE 1966 AMENDMENTS

Over 11 million nonsupervisory employees were covered under the minimum wage provisions of the Act by the 1966 amendments.

TABLE 6.—ESTIMATED NUMBER OF NONSUPERVISORY EMPLOYEES COVERED UNDER THE FAIR LABOR STANDARDS ACT BY THE 1966 AMENDMENTS, BY INDUSTRY

[In thousands]

Industry:	*Number of employees covered by 1966 amendments*
Agriculture	485
Mining	------
Contract construction	608
Manufacturing	64
Transportation, communications, utilities	98
Wholesale trade	120
Retail trade	2,875
Finance, insurance, real estate	89
Services (excluding domestic service)	3,999
Domestic service	------
Federal Government	636
State and local government	2,817
Total	11,791

With the exception of the 636,000 Federal employees covered, and the 485,000 agricultural employees covered, the bill would increase the minimum wage rate for such employees to $1.80 an hour effective on the first day of the second full month after the date of enactment, or August 1, 1973, whichever occurs first, $2.00 an hour effective July 1, 1974, and $2.20 an hour effective July 1, 1975. The Federal employees presently covered would be subject to the same rate as that applicable to employees covered prior to the 1966 amendments. The proposed minimum wage rate for covered agricultural employees will be discussed below.

Of the remaining 10,670,000 employees covered by the 1966 amendments, a $1.80 an hour minimum wage rate—assuming an effective date of July 1, 1973—would mean wage increases for an estimated 1,349,000. These are employees who are now earning less than $1.80 an hour.

The impact of a $2.00 an hour minimum wage rate—effective July 1, 1974—would mean wage increases for an estimated 1,866,000 employees who, at that time, will be earning less than $2.00 an hour.

The impact of a $2.20 an hour minimum wage rate—effective July 1, 1975—would mean wage increases for an estimated 2,379,000 employees who, at that time, will be earning less than $2.20 an hour.

INCREASE IN THE MINIMUM WAGE RATE FOR AGRICULTURAL EMPLOYEES COVERED UNDER THE ACT

The 1966 amendments extended the minimum wage protection of the Act to 485,000 employees employed in agriculture. The present minimum wage rate for such employees is—and has been since February 1, 1969—$1.30 an hour. The bill proposes to increase that rate to $1.60 an hour effective on the first day of the second full month after the date of enactment, or August 1, 1973, whichever occurs first, $1.80 an hour effective July 1, 1974, $2.00 an hour effective July 1, 1975, and $2.20 an hour effective July 1, 1976.

The bill does not propose an extension of minimum wage coverage to additional agricultural employees. It is interesting to note also,

that the 485,000 covered agricultural employees are employed on approximately 1 percent of the Nation's farms.

A $1.60 an hour minimum wage rate—assuming an effective date of July 1, 1973—would mean wage increases for an estimated 96,000 agricultural employees covered under the Act. These are employees who are now earning less than $1.60 an hour.

A $1.80 an hour minimum wage rate—effective July 1, 1974—would mean wage increases for an estimated 127,000 agricultural employees who, at that time, will be earning less than $1.80 an hour.

A $2.00 an hour minimum wage rate—effective July 1, 1975—would mean wage increases for an estimated 155,000 agricultural employees who, at that time, will be earning less than $2.00 an hour.

The impact of a $2.20 an hour minimum wage rate—effective July 1, 1976—would mean wage increases for an estimated 180,000 agricultural employees who, at that time, will be earning less than $2.20 an hour.

APPLICATION OF THE MINIMUM WAGE RATE TO EMPLOYEES PROPOSED TO BE COVERED UNDER THE ACT BY THE 1973 AMENDMENTS

The bill would extend the minimum wage protection of the Act to approximately 6 million employees.

TABLE 7.—ESTIMATED DISTRIBUTION OF NONSUPERVISORY EMPLOYEES WHO WOULD BE BROUGHT UNDER THE MINIMUM WAGE PROTECTION OF THE ACT BY THE BILL

[In thousands]

Industry	Total number of employees in industry	Number of employees now covered	Number of employees to be covered by the bill
Federal Government	2,333	636	1,697
State and local government	6,150	2,817	3,333
Domestic service	2,063	----------	935
Conglomerates	(1)	(1)	(1)
Total			5,965

[1] No estimate available.

NOTE.—The estimate of 5,965,000 employees proposed to be covered under the minimum wage provisions of the Act by the bill does not include those employees of conglomerates who would be covered by a provision of the bill.

For such employees, the bill would require a minimum wage rate of not less than $1.80 an hour effective on the first day of the second full month after the date of enactment, or August 1, 1973, whichever occurs first, not less than $2.00 an hour effective July 1, 1974, and not less than $2.20 an hour effective July 1, 1975.

The $1.80 an hour rate would mean wage increases for the following employees who are now earning less than $1.80 an hour:

Industry:	*Employees earning less than $1.80 an hour*
Federal Government	----------
State and local government	77,000
Domestic service	661,000
Total	738,000

The $2.00 an hour minimum wage rate—effective July 1, 1974—would mean wage increases for the following employees who, at that time, will be earning less than $2.00 an hour:

Industry:	*Employees earning less than $2 an hour*
Federal Government	-------
State and local government	119,000
Domestic service	687,000
Total	806,000

The $2.20 minimum wage rate—effective July 1, 1975—would mean wage increases for the following employees who, at that time, will be earning less than $2.20 an hour:

Industry:	*Employees earning less than $2.20 an hour*
Federal Government	-------
State and local government	157,000
Domestic service	708,000
Total	865,000

PUERTO RICO AND THE VIRGIN ISLANDS

Although the Fair Labor Standards Act applies to employees in Puerto Rico and the Virgin Islands, it does not require the payment of the minimum wage rate prescribed by section 6(a)(1); that is, the rate of $1.60 an hour. Instead, the Act provides for industry committees to convene and recommend minimum wage rates for the various occupations and industries in Puerto Rico and the Virgin Islands. The recommendations are to the Secretary of Labor who, in turn, translates them into wage orders. The wage orders then, represent the minimum wage rates applicable to Puerto Rico and the Virgin Islands. The most recent wage orders ranged from a minimum hourly rate of $0.47 an hour for hand-sewers of fabric gloves to the rate of $1.60 an hour for several occupations and industries.

Industry committees are appointed by the Secretary of Labor and are required to review minimum wage rates within the industries at least once during each biennial period. The purpose of each industry committee is "to reach as rapidly as is economically feasible without substantially curtailing employment" the $1.60 minimum wage rate. Each industry committee is charged with the obligation to recommend the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry and will not give any industry in Puerto Rico and the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands. Whenever the industry committee finds that a higher minimum wage may be determined for employees engaged in certain activities or in the manufacture of certain products in the industry than may be determined for other employees in the industry, the industry committee "shall recommend reasonable classifications within the industry as it determines to be necessary for the purpose of fixing for each classification the highest minimum wage rate that can be determined." No classification shall be made, however, and no minimum wage rate shall be fixed solely on a regional basis or on the basis of age or sex.

An industry committee is composed of residents of the island or islands where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of Puerto Rico and the Virgin Islands. The Secretary appoints an equal number of persons representing (a) the public, (b) employees in the industry, and (c) employers in the industry. The public members are disinterested parties, and the Secretary designates one as chairman.

The Department of Labor provides each industry committee with data pertinent to the matters referred to it, as well as a counsel and economist. An industry committee receives prehearing statements from employers, employees, trade associations, trade unions, and all other interested parties, and conducts hearings on the subject matter. A committee itself may call witnesses not otherwise scheduled to testify.

Promptly after receipt of all evidence, a committee attempts to resolve the issues before it and prepare a report containing its findings of fact and recommendations. After receiving a committee's report, the Secretary of Labor publishes the recommendations in the Federal Register and provides by order that the recommendations take effect upon the expiration of 15 days after the date of publication.

If an industry committee is unable to arrive at a recommendation within a reasonable time, or refuses to make a recommendation, it may be dissolved by the Secretary. An industry committee ceases to perform further functions when it has filed with the Department its report, and shall not again perform any functions with respect to any matter reported on, unless and until directed otherwise. An industry committee is dissolved automatically when its recommendations are no longer subject to judicial review (within 60 days after the issuance of the Secretary's wage orders).

With two notable exceptions the bill preserves the industry committee approach for ultimately achieving the applicable U.S. minimum wage rate in Puerto Rico and the Virgin Islands. The committee believes, however, that the economic situation in the islands—and particularly in Puerto Rico—has undergone substantial change and that the 1973 amendments would likely be the last to provide special wage procedures.

The two exceptions are:

(1) The minimum wage rate for hotel, motel, restaurant, food service, conglomerate, and Government of the United States and the Virgin Islands employees in Puerto Rico and the Virgin Islands will be determined—on the effective date of the bill—in accordance with the applicable minimum wage rate in the mainland.

(2) Percentage increases are applied to the most recent wage orders applicable to other employees in Puerto Rico and the Virgin Islands. The increases are applicable on several effective dates, as prescribed by the bill, and are generally determined by the amounts of the percentage increases in applicable U.S. minimum wage rates. Such increases may be reviewed by industry committees appointed by the Secretary.

With respect to the first exception, the committee concluded—after studying a substantial amount of testimony relating to the application of the Act in Puerto Rico and the Virgin Islands—that hotel, motel, restaurant, food service, conglomerate, and certain government employees in the islands should be covered by the Act the same as their

U.S. counterparts. It is significant that wage orders presently applicable in Puerto Rico require a minimum hourly rate of $1.60 an hour for all employees in hotels and motels with 100 or more sleeping rooms, $1.60 an hour for arts and crafts workers in hotels and motels with less than 100 sleeping rooms, $1.55 an hour for all other workers in hotels and motels with less than 100 sleeping rooms, $1.60 an hour for tipped employees in restaurants and food service establishments, and $1.50 an hour for all other employees in restaurants and food service establishments. Covered hotel and restaurant employees in the Virgin Islands are subject to a $1.45 an hour wage order.

The present coverage then, is already virtually identical to the U.S. coverage.

Hearings in Puerto Rico revealed that the cost-of-living is higher in Puerto Rico than it is in the U.S.; yet, the minimum wage rates are substantially lower. Thus the lower income worker is especially burdened by the higher costs of basic foodstuffs, transportation, and essentials.

Increases in the Consumer Price Index for Wage Earners' Families in Puerto Rico have been no less substantial than those applicable to the U.S.; as has been the case in the Virgin Islands.

Establishments in Puerto Rico generally enjoy special advantages not available to U.S. producers, such as complete exemption from Federal income taxes, subsidies, and exemption from Puerto Rico income taxes for a period of 10 to 17 years, depending upon the location of production.

These facts justify the consideration of employees and establishments in the islands on at least a parity with those in the U.S. insofar as the equitable application of the Fair Labor Standards Act is concerned; and certainly so in the case of those industries—such as hotels and restaurants—that have already demonstrated the ability to pay their workers the U.S. minimum wage rate without suffering adverse economic effects.

With respect to other workers in Puerto Rico and the Virgin Islands, the bill would provide percentage increases in existing wage orders based generally upon increases in the applicable U.S. minimum wage rates.

An exception to this provision is the case of agricultural employees whose hourly wages are subsidized by the Government of Puerto Rico.

Subparagraph 3(B) of section 105(a) of the bill provides that any agricultural employee whose hourly wages are subsidized, in whole or in part, by the Government of Puerto Rico will receive an initial increase of 15.4 percent on the combined amount of the most recent wage order and the subsidy. Successive increases also include the subsidy in determining the revised applicable rate.

This provision affects certain Puerto Rican agricultural workers. For example, the most recent wage order for sugar workers provides 70 cents an hour and the Commonwealth of Puerto Rico subsidizes the wages paid by their employers at the rate of 30 cents per man hour. The 30 cents is to be paid on top of the wage order for a total employee wage of $1.00 an hour.

Without this provision, the subsidized workers would get little or no benefit from the minimum wage increases scheduled in H.R. 7935

because the increase generally provided in the bill or the "60 per cent provision" in paragraph (8) (contained in section 105(a)) would be applicable only to the wage order rate of 70 cents an hour.

The provision therefore assures that subsidized agricultural employees will get the same percentage increase in their government-prescribed wage as all other covered farm workers.

All percentage increases in wage orders prescribed by the bill (except those applicable to subsidized agricultural employees) are subject to the review procedure first established by the 1961 amendments. This procedure permits any employer, or group of employers, employing a majority of the employees in an industry in Puerto Rico or the Virgin Islands to petition the Secretary for the appointment of a special industry committee to recommend the minimum wage rate or rates to be paid such employees in lieu of the rate or rates required as a result of the percentage increases. The Secretary may then appoint a special industry committee if he has reasonable cause to believe that employment in such industry will otherwise be substantially curtailed.

In appointing any such special industry committee the Secretary shall, to the extent possible, appoint persons who were most recently convened to recommend the minimum rate or rates of wages to be paid by any such employer or employers in Puerto Rico or the Virgin Islands. The existing provisions and requirements relating to industry committees shall be equally applicable to those appointed for the purpose of reviewing the percentage increases prescribed by the bill.

The bill provides a supplemental requirement of all special industry committees, in addition to those presently contained in section 8(b) of the Act. The Act now requires that a special industry committee recommend "the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands."

Section 105(b)(1) of the bill would require special industry committees to recommend the appropriate minimum wage required in the U.S. mainland to employers unless there is substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years, and other relevant economic data such as prices and productivity, etc., which establish that the industry, or a predominant portion thereof, is unable to pay that wage and the result would be a substantial curtailment of employment.

In establishing the industry committees, Congress intended that their findings as to the highest minimum a Puerto Rican or Virgin Islands industry could pay, up to the applicable mainland minimum, would be based on record-evidence adequate to reveal the financial and economic condition of the covered employers. However, the committee has concluded that the industry committees at times are not provided with the requisite data. As a result, the industry committee proceedings have on a number of occasions degenerated into a process by which a majority of the members work their will knowing that the

record is bare of the facts necessary to controvert their argument that higher wages would substantially curtail employment.

Exactly such a charge was considered by the U.S. Court of Appeals for the District of Columbia in *Sindicato Puertorriqueno De Trabajadores* v. *James D. Hodgson, Secretary of Labor*, ——— F. 2nd—(C.A. D.C. No. 24,057, July 21, 1971). In that case, the Court of Appeals overturned the refusal of an industry committee to increase the minimum wages in the Puerto Rican general agricultural industry above a range from 58 cents to $1.10 an hour. The court stated that the industry committee's conclusions were "devoid of a single (supporting) subsidiary finding."

Section 105(b)(1) seeks to correct the fault which the *Sindicato* decision exposed and is consistent with the rationale of that case. It would require the industry committees to recommend the appropriate minimum wage required of mainland employers in all cases in which the documentary evidence demonstrating that there would be substantial curtailment of employment is lacking. This requirement will provide a spur to insure that the industry committees will be in a position to act rationally rather than arbitrarily.

Section 105(b)(2) of the bill provides that in any case in which a Court of Appeals concludes on review that the evidence required by section 105(b)(1) has not been produced before the industry committee, the Court may then order the employer to pay the applicable minimum wage required of U.S. mainland employers.

This provision also stems from the *Sindicato* decision of the Court of Appeals in which the court concluded that it was powerless to establish a higher minimum on its own. It therefore remanded the proceeding "to enable petitioner, if so advised, to obtain further consideration of the matter by an appropriate committee."

Thus, because of the remedial limitations of the Act, the employers while losing their legal point gained their practical objective—the right to pay the lower wage set by the industry committee. If this result were to be allowed to stand, only employers, who could seek to have the court reinstitute the prior wage order, would have an incentive to appeal. This would be inequitable and inconsistent with the basic notion that there should be an effective remedy for any substantial wrong.

The bill also provides for the establishment of special industry committees to recommend minimum wage rates for employees newly covered by the 1973 amendments (other than employees described in section 104 of the bill), including employees of the Government of Puerto Rico and political subdivisions thereof who are not now covered by the Act.

It provides further that, notwithstanding any other provision, no wage rate for covered employees may be less than 60 per centum of the minimum wage rate applicable to the same class of employees in the United States. This provision essentially represents a subminimum wage rate for employees in Puerto Rico and the Virgin Islands. It was included to prohibit the unconscionably low wage rates presently applicable to some categories of employment, such as that applicable ($0.47 an hour) to hand-sewers of fabric gloves.

FEDERAL, STATE, AND LOCAL GOVERNMENT EMPLOYEES

Section 201 of the bill amends the definitions of "employer", "enterprise", and "enterprise engaged in commerce or in the production of goods for commerce", to include activities of the Government of the United States or of any State or political subdivision of a State; thereby extending minimum wage and overtime coverage to employees engaged in the activities of Federal, State, or local governments. The committee intends such coverage to also encompass any public agency established under a compact between the States or any other public agency established jointly by more than one State or political subdivision of a State.

The bill, however, establishes an overtime exemption applicable to Federal employees (except those covered by the 1966 amendments) and "any employee of a State or political subdivision of a State engaged in fire protection or law enforcement activities." Therefore, certain Federal employees and police and firemen will not be subject to the overtime requirements of the Act.

Minimum wage coverage would be extended to an estimated 5 million public employees. More than 3.4 million public employees are presently covered by the Act.

In the case of public employees first covered by the 1973 amendments, and State and local government employees covered by the 1966 amendments, the bill would provide a minimum wage rate of not less than $1.80 an hour effective on the first day of the second full month after the date of enactment, or August 1, 1973, whichever occurs first, not less than $2.00 an hour effective July 1, 1974, and not less than $2.20 an hour effective July 1, 1975. Federal employees covered by the 1966 amendments would be subject to a minimum wage rate of not less than $2.00 an hour effective on the first day of the second full month after the date of enactment, or August 1, 1973, whichever occurs first, and not less than $2.20 an hour effective July 1, 1974.

The impact of a $2.20 an hour minimum wage rate on all such employees is illustrated in a preceding section, but it is significant to note here that there would be no impact with respect to newly covered Federal employees.

The Department of Labor in 1970 evaluated the feasibility of extending minimum wage and overtime protection under the Act to nonsupervisory employees in State and local governments, and submitted its findings to the Congress. The 1966 amendments extended coverage to public education and hospital institutions.

In a "Summary of Findings," the Department concluded that:

> The nationwide survey of State and local governments (excluding education and hospital institutions) indicates that wage levels for State and local government employees not covered by the FLSA are, on the average, substantially higher than those of workers already covered. Hence, if coverage under the FLSA is extended to these workers, comparable minimum wage and overtime standards would not have as great an impact as did the earlier extension of FLSA coverage to employees of State and local government schools, hospitals, and residential care establishments.

The Department estimates that 77,000 of the 3,333,000 State and local government employees to be covered by the bill would be benefited by the impact of a $1.80 an hour minimum wage rate; 119,000 would be benefited by the impact of a $2.00 an hour minimum wage rate effective July 1, 1974; and that 157,000 of that total would be benefited by the impact of a $2.20 an hour minimum wage rate effective July 1, 1975.

In March 1970, the length of the average workweek for nonsupervisory employees in State and local governments was 38.1 hours. Nationwide, over three-fifths of the nonsupervisory employees worked 40 hours during the week surveyed by the Department, but only a tenth worked over 40 hours.

The Department concluded:

> Long workweeks were most prevalent among employees in the public safety activity, which includes police and fire departments. A fifth of the public safety employees worked over 40 hours and they comprised half of the employees on long weekends. Public works was also significant in this regard, employing 27 percent of the workers on long weekends.
>
> During the survey week, only 2.3 percent of total nonsupervisory man-hours in State and local governments represented hours worked in excess of 40. If a 40-hour Federal overtime standard were in effect at the time of the survey, the premium pay required for these hours would have approximated one percent of the weekly wage bill. The actual impact of a 40-hour standard would have been less because a substantial proportion of the employees receive premium overtime pay.

This conclusion does not, of course, consider the overtime exemption contained in the bill for police and firemen. The actual impact on State and local governments then, of a 40-hour standard, will be virtually non-existent.

TRANSIT EMPLOYEES

Section 202 of the bill reduces the overtime exemption for any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban, or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency.

The existing overtime exemption applicable to such employees is modified by requiring the payment of overtime compensation for hours worked in excess of 48 per week during the first year after the effective date; for hours worked in excess of 44 per week during the second year; and thereafter, for hours worked in excess of 42 per week.

In determining the hours of employment of such an employee, hours employed in "charter activities" shall not be included if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee's regular employment. It is to be emphasized that "charter activities" shall not include any such employment which

the employee is assigned to perform or which he is otherwise required to perform as part of his regular workday or workweek.

The modification of the overtime exemption affects about 91,000 employees employed in transit operations.

Some testimony before the committee regarding a proposed repeal of the exemption, tended to distinguish and isolate the local transit industry from all other components of American industry by suggesting special and unique problems such as report time, turn-in-time, meal period, and other similar types of time and work categories.

Such problems as piecework, on-call-time, meal periods, rest periods, and other pay practices of a special nature, have been considered and resolved successfully in many differing industries by administrative procedure. This procedure has led to the development of a body of law and regulations that, over the years, have won acceptance by the courts, and by the Congress, which has had an opportunity to review these practices whenever amendments to the Act have been considered.

One union in the industry has approximately 66,600 of the 91,000 employees organized. A review of the relevant collective bargaining agreements discloses that 59,000 of those employees—or more than 88%—are covered by a 40-hour workweek and, in many cases, an 8-hour workday. It is evident then, that the "problems" of the 40-hour workweek pointed to by some segments of the industry have and are already being met and resolved by a substantial majority of the industry. Moreover, the bill permits a 42-hour workweek before requiring the payment of overtime compensation.

SEASONAL INDUSTRY EMPLOYEES

Section 204 of the bill would gradually phase out the overtime exemptions provided in section 7(c) and 7(d) of the Act for certain industries which are seasonal in nature and certain other industries which also perform certain first marketing, first processing, handling, packing, storing, preparing or canning operations on perishable agricultural and horticultural commodities in their raw or natural state.

This action by the committee is in keeping with the declared intention of Congress in 1966 and the recommendation of George P. Shultz, then Secretary of Labor, in 1970.

The Conference Report on the Fair Labor Standards Amendments of 1966 told of the forthcoming repeal of these exemptions. In it, the conferees of the House of Representatives and the Senate wrote:

> It was the declared intention of the conferees to give notice that the days of overtime exemptions for employees in the agricultural processing industry are rapidly drawing to a close, because advances in technology are making the continuation of such exemption unjustifiable.

Because of this Congressional action, the Labor Department, under Secretary Shultz, undertook a lengthy and detailed study of these and other agricultural processing exemptions. The Secretary sent to Congress a report in January 1970, consisting of two volumes with 675 pages of data and findings. The Secretary urged Congress in his "Findings and Recommendations:"

> The survey findings clearly indicate that consideration should be given to the phasing out of the overtime exemptions currently available to the agricultural handling and processing industries * * *. The favored position held for three decades by agricultural handlers and processors because of full and partial exemption from the 40-hour weekly overtime standard applicable to most industries covered by the FLSA needs reexamination.

Secretary Shultz then gave reasons for his phase-out conclusion. They include: The exemptions are not fully used. Many affected establishments demonstrate the feasibility of the 40-hour week by paying time and one-half rates for overtime hours now. Some industries using the 20 weeks of exemptions are less seasonal than those using only the 14 weeks. The universal 40-hour standard would remove intra-industry inequities. The use of second and third shifts could be increased. And technological, marketing, and other advances have lengthened the processing period, extended storage life of perishable products, and permitted processors to exercise more precise control.

The last reason given by Secretary Shultz for his conclusion is especially interesting and important:

> There was a sharp drop in man-hours over 40 a week during the periods the exemptions were most likely to be claimed. The drop in man-hours over 40 a week generally occurred before the expiration of the exemption period. Thus, over the exemption period presently provided—14 weeks or 20 weeks—the exemptions declined in importance to handlers and processors as man-hours over 40 a week diminished. This indicates that a gradual annual cut back in the length of the exemption period would provide for orderly adjustment to the standard applied in other industries 30 years ago.

The committee was urged by various witnesses to repeal the exemptions immediately. They argued that Secretary Shultz's phase-out recommendations will already be 4 years old by the time the 1973 amendments go into effect. They pointed to the low wages and income of processing workers and the high unemployment rate among rural workers. Repealing the exemption would ameliorate both problems, they said, by providing some overtime pay and by increasing the number of workers hired. Using the statistics of the Labor Department study, they calculated that the requirement of time and one-half rates after 40 hours would increase the annual payroll of the largest industry listed in the report by only 1.9 percent, or about 5.34 cents an hour. Despite this and other evidence showing sharp rises in industry productivity, the committee believed that a three-year phase-out of this exemption was more desirable than immediate repeal because it assured a more proper and smoother preparation for the 40-hour week. However, it is the opinion of the committee that throughout the phase-out period, the exemption should be strictly limited to those agricultural commodities which meet the requirements of the statute.

The committee has also heard complaints against the phase-out of the exemptions. However, the committee is not unmindful that

when it sharply cut back the overtime exemptions in the 1966 amendments, similar—in fact, sometimes the same—arguments against the action were heard then as now. Yet, not a single instance of harm caused by the 1966 exemption cutback has been brought to the committee's attention.

DOMESTIC SERVICE EMPLOYEES EMPLOYED IN HOUSEHOLDS

Section 205(a) of the bill contains the following Congressional findings:

> The Congress finds that the employment of persons in domestic service in households directly affects commerce because the provision of domestic service affects the employment opportunities of members of households and their purchasing activities. The minimum wage and overtime protection of the Fair Labor Standards Act of 1938 should have been available to such persons since its enactment. It is the purpose of the amendments made by subsection (b) of this section to assure that such persons will be afforded such protection.

Subsection (b) provides a minimum wage rate for such employees of not less than $1.80 an hour effective on the first day of the second full month after the date of enactment, or August 1, 1973, whichever occurs first, not less than $2.00 an hour effective July 1, 1974, and not less than $2.20 an hour effective July 1, 1975. These rates would be applicable to a domestic service employee unless "such employee's compensation for such service would not because of Section 209(g) of the Social Security Act constitute 'wages'." Subsection (b) also applies the overtime requirements of the Act to such employees.

The bill exempts from both the minimum wage and overtime requirements, however, "any employee who is employed in domestic service in a household and who resides in such household."

The bill would extend coverage to an estimated 935,000 employees employed in domestic service, out of a total of 2,063,000 such employees. About 661,000 of those proposed to be covered currently earn less than $1.80 an hour.

According to a special survey of private household workers undertaken by the Department of Labor, 31 percent of domestic workers in the U.S. were paid cash wages of less than $.70 an hour; 48 percent were paid less than $1.00 an hour, and 68 percent were paid less than $1.50 an hour.

Nationwide, 53 percent of domestic workers worked short workweeks (less than 15 hours), more than one-third worked 15 to 40 hours and nearly one-tenth worked over 40 hours.

These statistics give cause to the reduction by 1 million in the number of domestic employees during the last decade. Private household work has become one of the least attractive fields of employment. The great preponderance of the household workforce is comprised of female employees; and the median age of the household worker has climbed to 50, or 10 years older than the average for other female workers.

In addition to substandard wages and working conditions, employees performing domestic service work are generally excluded from mini-

mum wage laws, unemployment compensation, and workmen's compensation. They invariably receive no benefits such as sick leave and paid vacations, and their transportation to and from their workplace often takes up to two hours in one day. And as one witness before the committee poignantly noted, they have no appeal against the employer who calls suddenly in the morning, or announces upon arrival, "We won't need you, after all."

Their disabilities are compounded by the fact that domestic service employees are not covered by the Social Security Act unless they earn at least $50 from one employer in a calendar quarter. For those who earn that amount, the responsibility to insure that protection rests with the employer. Often employers of private household workers fail to comply with the reporting requirements. These workers then, who earn too little to adequately survive, much less to save for advancing age or disability, are also without secured retirement benefits.

The committee expects that extending minimum wage and overtime protection to domestic workers will not only raise the wages of these workers but will improve the sorry image of household employment. The committee is convinced that the sharp decline in household employment over the last decade reflects not only the prevalence of low wages and long hours, but the widespread conviction that these are dead-end jobs. Including domestic workers under the protection of the Act should help to raise the status and dignity of this work.

At this point, it is appropriate to include the following letter from women Members of this Congress to the Chairman of the subcommittee, with respect to the coverage of domestic workers under the Act.

HOUSE OF REPRESENTATIVES,
Washington, D.C., April 17, 1973.

Hon. JOHN H. DENT,
Chairman, General Subcommittee on Labor,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: We have heard rumors that your Subcommittee is under pressure to drop the extension of minimum wage coverage to domestic workers. As women legislators, this is of great concern to us. Although we represent a variety of political attitudes and approaches and do not normally vote as a block, we are all very disturbed about this measure.

As you know, women are at the bottom of the economic ladder. According to the H.E.W. Report "Work in America," December, 1972, (p. 42), the income profile for American workers is as follows:

Median income, 1969

All males	$6,429
Minority males	3,891
All females	2,132
Minority females	1,084

Contrary to popular opinion, women work not for "pin money" but because they have to. They are either the head of the household or contribute substantially to their family's income.

For example:

According to the 1970 Census, 11% of all American households are headed by women.

Among Black families, 28% are headed by women.

Further, female headed households are growing. In 1960, 25% of all marriages ended in divorce or annulment. By 1970, the figure was up to 35%

Among married women in 1970, 8 million earned between $4,000 and $7,000.

In addition, the proportion of women and female headed families with incomes under the poverty line, is a clear reflection of their economic plight.

According to the 1970 Census, there were still some 25.5 million poor in the nation (e.g., incomes under $3,969).

Only 21.5% of these families are on welfare.

Of these female heads of households who work, over half worked as maids in 1970 and had incomes under the Federal poverty line.

The median income for domestics is $1,800.

These women are struggling to make ends meet and keep their families together. They are proud hard workers who are doing their darndest to stay off the welfare rolls and are getting precious little help for their efforts. Let's provide some help for those who are trying to help themselves.

The average American voter is indeed fed up with anyone they perceive to be "loafing" or "getting something for nothing", but they do support an honest day's wage for an honest day's labor.

We ask that you do everything in your power to see to it that the extension of minimum wage to domestic workers is not eliminated. It is time that these hard working women got some help and protection.

Very truly yours,

SHIRLEY CHISHOLM,
Member of Congress.
MARJORIE S. HOLT,
Member of Congress.
LEONOR K. SULLIVAN,
Member of Congress.
YVONNE BRATHWAITE BURKE,
Member of Congress.
PATSY T. MINK,
Member of Congress.
JULIA BUTLER HANSEN,
Member of Congress.
EDITH GREEN,
Member of Congress.
MARTHA W. GRIFFITHS,
Member of Congress.
ELLA T. GRASSO,
Member of Congress.
BELLA S. ABZUG,
Member of Congress.
ELIZABETH HOLTZMAN,
Member of Congress.
BARBARA JORDAN,
Member of Congress.
PATRICIA SCHROEDER,
Member of Congress.

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YOUTH EMPLOYMENT

The committee considered and rejected the idea that the Fair Labor Standards Act should incorporate a special subminimum rate for youth. The rejection was based not only on the fact that this would violate the basic objective of the Act, but was made with the conviction that such a standard would contribute to rather than ease the critical problem of unemployment, including unemployment of youths and minority groups.

The committee recognizes that the Fair Labor Standards Act enacted 35 years ago had as its stated objective the elimination of "living conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers."

Its basic purpose has been and continues to be the raising of wages of that small proportion of employees at the bottom of the wage scale who are in no position to bargain for themselves. It is not a substitute for collective bargaining or the operation of the free labor market. It protects the fair employer from unfair competition from chiseling employers. The minimum wage set under the Fair Labor Standards Act is not an average wage. It is the "lowest" wage which may be paid employees in activities covered by the Act. It is paid to the unskilled, untrained, inexperienced worker who frequently is young or black or a woman.

Except for those years in which it was increased (and not always in those years) the minimum wage was always less than half the average wage in manufacturing.

The minimum wage rate, not unlike the occupational wage rate, is a wage for a job—not for the age or sex or color of the person doing the job. That is the way we view wage-setting in this country.

Those who would recommend imposing or retaining a subminimum wage as a solution to the unemployment problem appear to have serious misconceptions about the minimum wage and, in fact, about the role of wages in general.

There is no evidence to support the idea that low wages create jobs. Actually, what evidence there is points in the opposite direction. Putting money in the hands of low-wage workers is the most direct way of creating purchasing power—high-velocity dollars—and hence additional jobs.

To imply that employers would hire workers they did not really need because wages are low not only ignores the whole concept of business-for-profit but also omits from consideration all the other labor-cost factors, such as employment, recruiting, supervision, social security, workmen's compensation, unemployment insurance, pension plans, hospitalization, medical plans—all of which must be considered when new jobs are created.

Proponents of a subminimum wage rate for youth state their interest in terms of increasing employment opportunities for young workers. They point to independent studies, mainly by academicians, and observations by other economists, as supporting their contention. In actual fact, the academic community is at best divided on the question. An equal number of independent studies have found that mini-

mum wage rates have had no adverse effect on employment opportunities for teenagers.[1]

Moreover, the most comprehensive and ambitious recent inquiry into the subject was conducted by the Department of Labor, which essentially concluded: "In general, the most important factor explaining changes in teenage employment and unemployment has been general business conditions as measured by the adult unemployment rate."

In rejecting the concept of a subminimum wage rate based on age, the committee was impressed by the findings in the study "Youth Unemployment and Minimum Wages" Bulletin 1657. This report, prepared by the Department of Labor in 1970, is on the relationship between minimum wages and youth unemployment. The report states that the various studies failed to establish any relationship between youth unemployment and the minimum wage. To quote some of the major findings in this report:

> Not one of the local offices of the Employment Service (ES) cited the recent hike in the minimum wage or the extension of coverage under the Federal Fair Labor Standards Act as responsible for the change between June 1966 and June 1969 in the total number of nonfarm job openings available to teenagers, or which specified a minimum age of 16–19 years of age or 20 years old or over.
>
> In nearly all of the States covered by the study, differential minimum wage rates applicable to youth, including exemptions, appear to have little impact on the employment of youth in 1969.
>
> On the basis of our examination (with respect to foreign experience) however, it appears reasonable to conclude that wage differentials are less important factors than rapid economic growth, structural and technological shifts, national full employment, relatively low mobility rates, and the relative shortage of young workers. A similar confluence of these factors in the American economy might well have similar effects on youth employment regardless of the wage structure.

Proponents of a subminimum wage rate for youth also profess a special concern for increasing employment opportunities for black youth, pointing to an exceedingly high unemployment rate among black teenagers. They view a youth subminimum wage rate mechanism as the panacea. The committee finds this "remedy" to the problem of black teenage unemployment devoid of an understanding of the problem itself.

A few statistical realities point this out.

In April 1973, the unemployment rate for all teenagers (ages 16–19) was 15.4 percent. For white teenagers, it was 13.3 percent; for black teenagers, 32.8 percent. For black male teenagers, it was 30.7 percent;

[1] Hugh Folk, "The Problem of Youth Unemployment," in the Transition from Youth to Work, Princeton. Princeton University Press, 1968: 76–107.
Edward Kalachek, "Determinants of Teenage Employment." The Journal of Human Resources, vol. iv, No. 1, Winter 1969: 3–21.
Lester C. Thurow, "The Determinants of the Occupational Distribution of Negroes," in G. Somers, ed., Education and Training of Disadvantaged Minorities. Madison, Wisconsin University Press, 1969: 187–205.

for black female teenagers, 35.5 percent. Obviously color appears to be more important than age.

The committee was particularly struck by the fact that the most recent data shows the unemployment rate for *nonwhite high school graduates* to be 9.6 percent—higher than the 9.2 percent level for *white high school dropouts*. The rate for nonwhite high school dropouts was 15.5 percent.

These figures convinced the committee that combining unemployment statistics for nonwhite and white teenagers and labeling the result a teenage problem, tended to disguise the real problem. And that is discrimination in employment because of color.

If a special youth minimum wage rate is to be justified on the basis of increasing employment opportunities for black teenagers, perhaps its proponents should narrow its application and focus precisely on black teenagers. An extension of this logic would require consideration then, of another special minimum wage rate for black female teenagers. Surely, their unemployment rate is even higher than that among black male teenagers. Finally, and ultimately, this logic demands yet another subminimum wage rate for black female teenagers living in inner metropolitan areas—for theirs is the highest unemployment rate of all.

Testimony advocating a subminimum wage rate for youth was similarly not convincing in establishing a clear link between that rate and increased employment opportunities.

The testimony of Saul Hoch, Deputy Assistant Secretary (of Labor) for Policy, Evaluation, and Research, appeared hesitant in this respect:

> I think this would assist youth in getting jobs. There are many other barriers that youth face and it is not clear how important this will be in their getting jobs, however, I don't think we will ever know until we actually try it.

The former Secretary of Labor, James D. Hodgson, even while recommending a subminimum youth wage to the 92d Congress, admitted in his testimony that "there is no proof" it would generate any youth employment.

In 1971, before the Senate Labor Subcommittee, Secretary Hodgson recognized "that there may be some concern that a lower minimum wage for young people under age 18 . . . may reduce employment opportunities for older workers. There may be some risk in marginal cases."

These statements are not reassuring in encouraging the committee to "actually try it". Rather, the more profound consideration is the considerable testimony and evidence pointing to severe detrimental effects on other workers as the result of a subminimum wage rate for youth.

Population trends during the 1970's will ease the youth unemployment problem, just as those trends were responsible for much of the problem during the 1960's. Projections of the Department of Labor estimate an increase of teenagers (ages 16 to 19) in the labor force between 1968 and 1980 of 1.2 million (an average of 100,000 a year), a considerable slowdown from the 2.3 million increase over the preceding 12 year period, 1956 to 1968.

Over the decade 1961 to 1971—at a time when coverage of the Fair Labor Standards Act was being extended to more and more jobs typi-

cally held by youth, employment among 16 to 19 year olds was expanding by an average of 210,000 jobs a year. Assuming a continuation of this expansion, the economy's growth should easily accommodate the job needs of youth, without special treatment in the Federal minimum wage law.

The method for creating even more jobs for teenagers is not through a subminimum wage exploiting youth and threatening jobs of adult workers, but by expanding aggregate demand in the economy and continuing or undertaking programs addressed to the problems of specific disadvantaged groups. The committee is interested in all programs which will stimulate the economy in general and generate additional jobs for all the unemployed. It is opposed to a youth wage or a black wage or any other such arbitrary subminimum wage under the Fair Labor Standards Act.

EMPLOYMENT OF STUDENTS

As a sequel to the discussion of the need for and the probable effects of a subminimum wage for youth, the peripheral question of special wage rates for full-time students was examined.

The legislative history of section 14(b) and 14(c) of the Act was studied to determine the Congressional intent in establishing special rates for students.

The Act currently permits the employment of full-time students on a part-time basis (or full-time during vacations and holidays) in retail and service establishments and in agriculture under special certificates issued pursuant to regulations of the Secretary of Labor at a wage rate not less than 85 percent of the applicable minimum wage. These certificates are issued to the extent necessary in order to prevent curtailment of opportunities for employment.

Prior to the 1961 amendments to the Act, there were no provisions relating to the employment of full-time students at subminimum rates. In revising section 14 of the Act to include full-time students, the committee sought, through the issuance of certificates, to provide an incentive for employers to hire students while providing assurances that adult workers would not be adversely affected.

This consideration was clearly spelled out in the report accompanying H.R. 3935 (H. Rept. No. 75, 87th Congress, 1st Session, March 13, 1961, p. 11):

> The purpose of this provision is to provide employment opportunities for students who desire to work part time outside of their school hours without displacement of adult workers.

The 1966 amendments to the Act further revised section 14 with respect to full-time students in retail and service establishments and added a provision for students in agriculture.

The report accompanying H.R. 13712 (H. Rept. No. 1366, 89th Congress, 2nd Session, March 29, 1966) explained that the full-time student certificates were to be issued to "students regardless of age (but in compliance with the applicable child labor laws)", and repeated the basic objectives of these provisions—to provide employment opportunities for students outside of school hours without displacement of adult workers.

The committee agrees with the statements expressed in the 1961 and 1966 reports and proposes in the bill to expand the scope of section 14 of the Act in order that more occupations not determined to be "particularly hazardous" may be available as employment opportunities for students. The committee bill, however, maintains a certification procedure to ensure that students will not be used to displace job opportunities for other workers, although the administrative procedure to be followed by prospective employers of four or fewer students is lessened from existing law.

The committee is emphatic in urging the Secretary to be diligent and attentive to his certification responsibilities. The procedure is not to be observed in its breach. Special certificates for the employment of a student by an employer, are not to be issued by the Secretary unless he is satisfied that the employment of any such student will not "create a substantial probability of reducing the full-time employment opportunities" of other workers.

The bill delineates a number of occupations for which the special student rate is not applicable. Generally, these occupations are those deemed by the Secretary—under existing child labor regulations—to be "particularly hazardous" for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being. The committee intends that the rationale used in determining those occupations be equally applicable in determining the scope of the occupations listed by the bill, as well as in determining those other occupations the Secretary may find to be "particularly hazardous" for the employment of students. The committee does not believe such hazardous occupations should be filled by students—regardless of age—earning less than the minimum wage rate.

Also, the committee is aware that the Secretary—under the provisions of existing law—often grants student employment certificates which each permit the employment of more than one student at the special rate. In 1972, the average number of students authorized was nearly 8 per certificate granted. The committee is not opposed to this *en bloc* certification procedure, but again urges the Secretary to ensure that he is not thereby adversely affecting the employment opportunities of non-student workers.

Section 206 of the bill also provides that the Secretary may (by regulation or order) waive the minimum wage and overtime provisions of the Act with respect to a student employed by his elementary or secondary school, where such employment constitutes an integral part of the regular educational program provided by the school.

The committee urges the Secretary to be diligent in determining that the employment is in fact an integral part of the regular education program and that this provision is not used to circumvent the requirements of the statute.

LAUNDRY AND CLEANING ESTABLISHMENTS

Section 207 of the bill requires the consideration of establishments engaged in laundering, cleaning, or repairing clothing or fabrics as service establishments in the administration of sections 7(i) (relating to commission employees) and 13(a)(1) (relating to executives and administrative personnel and outside salesmen) of the Act.

The committee does not intend that such establishments be considered service establishments in the administration of sections of the Act beyond those specified, but clearly intends that they be subject to the same rules and regulations applicable to service establishments pursuant to those sections.

This issue essentially involves the exemption of employees of such establishments from the overtime provisions of the Act when they qualify as commission salesmen, the exemption of employees of such establishments from the minimum wage and overtime provisions when they qualify as outside salesmen, and the ability of such employees to perform "non-exempt" work in amounts applicable to other employees of service establishments.

In this connection, it should be clearly understood that the scope of section 207 of the bill covering laundry and dry cleaning establishments includes wholesale dry cleaning establishments. The committee expressed concern over a clear misunderstanding with respect to representations made by the Department of Labor to it and to the Congress during consideration of the 1966 amendments to the Fair Labor Standards Act with respect to the status of wholesale dry cleaning driver salesmen thereunder. It was at that time represented to the committee and to the Congress that the driver salesmen in the wholesale dry cleaning industry would remain exempt under the section 13(a)(1) exemption covering outside salesmen, but it appears that the administration of the 1966 amendments has not been consistent with those representations. See in this connection 112 Congressional Record, Part 9, at pages 11082 through 11084. The word "establishments", as used in section 207 of the bill, includes the wholesale establishments to which reference was made in the 1966 exchange with the result that the driver salesmen within the wholesale dry cleaning industry will clearly be within the exemption provided by section 13(a)(1) and of section 7(i) if they otherwise qualify for such exemption.

MAIDS AND CUSTODIAL EMPLOYEES OF HOTELS AND MOTELS

Section 208 of the bill extends the overtime coverage of the Act to maids and custodial employees of hotels and motels.

The committee intends that a "custodial" employee be one who guards and protects or maintains the premises, or the hotel or motel facility, in which he is employed. This would include an employee who performs janitorial functions, who keeps the facility clean, who tends the heating system, makes minor repairs, and the like. It would also include employees of the facility engaged in activities incidental to the operation of the hotel or motel, such as maids and custodial employees in the facility's beauty or barber shops, valet, restaurant, and the like. Overtime protection then, would be afforded to those who have heavy duties such as laying carpets and rugs and arranging furniture and to those who have light duties such as making beds, dusting furniture, and replenishing linen.

CONGLOMERATES

Section 209 of the bill precludes the availability of the minimum wage and overtime exemptions of section 13 of the Act (with certain exceptions) to conglomerates, as defined by the bill.

The committee recognizes the multi-economic advantages associated with a conglomerate-type of business enterprise. Advantages of substantial working capital, the velocity of working capital, purchasing power, tax write-off considerations, the ability to sustain protracted losses in one phase of the enterprise, and others, come immediately to mind. The committee believes these advantages permit conglomerates to operate in unfair competition with single-business oriented activities.

The Fair Labor Standards Act has traditionally permitted the exclusion of "mom and pop" establishments from its requirements, in recognition of the social and economic merits of not aggravating a competitive, free enterprise market. But the last several years have witnessed the advent of the conglomerate; the multi-business oriented, all encompassing mode of operation. Because of the construction of the Act, and its various exemptions, business activities with gross annual sales in the hundreds of millions of dollars have enjoyed relief from its provisions on an equal footing with individual competitive establishments which are, in fact, small—and for whom the advantages of bigness do not apply.

The committee bill proposes to preclude such activities from the exemptions contained in the Act, by denying them to conglomerates whose annual gross volume of sales made or business done exceeds $10,000,000.

The activities of one conglomerate active in agriculture are deserving of mention at this point, in order that the committee's contention and action may be clear and understandable. The information was largely derived from a series of articles on the subject which appeared during the last Congress in the Congressional Record. The name of the conglomerate is not important but its activities symbolize an agricultural revolution that may reshape beyond recognition the Nation's food supply system. It is like dozens of the largest corporations with nonagricultural names that have diversified into agriculture. And it serves as a useful illustration.

This particular concern is that the new breed of conglomerate farmers do not merely grow crops or raise cattle. They think in terms of "food supply systems," in which they own or control production, processing, and marketing of food.

One conglomerate reported to its stockholders, ". . . (our) goal in agriculture is integration from seedling to supermarket." Its resources to achieve that goal include 1970 sales of $2.5 billion, profits of $324 million, and assets of $4.3 billion in such fields as oil production, shipbuilding, and manufacturing.

The conglomerate invasion of agriculture comes at a time when millions of farmers and farm workers have already been displaced, contributing to the problems of rural wastelands and congested cities. More than 100,000 farmers a year are quitting the land, and more than 1.5 million of those who remain are earning less than poverty-level farm incomes.

Although the U.S. Census counts 2.9 million farmers, 50,000 grow one-third of the Nation's food supply and 200,000 produce more than one-half of all food. The concentration of production is especially pronounced in such crops as fruits, vegetables, and cotton.

In 1965, 3,400 cotton growers accounted for 34 percent of sales, 2,500 fruit growers had 46 percent of sales, and 1,600 vegetable growers had 61 percent of the market.

The medium to large-size "family farms"—annual sales of $20,000 to $500,000—survived earlier industrial and scientific revolutions in agriculture. They now face a financial revolution in which traditional functions of the food supply system are being reordered, combined, and coordinated by corporate giants.

The new corporate farmers account for only 7 per cent of total food production, but they have made significant inroads in certain areas. Twenty large corporations now control poultry production. A dozen oil companies have invested in cattle feeding. Only three corporations dominate California lettuce production. The family farmer is still obvious only in growing corn, wheat, and other grains; but even here constantly larger acreage, machinery, credit, and higher prices are necessary for the family farmer to stay profitably in business.

Even the largest independent farmers question their ability to compete with a corporation which can, at least in theory, own or control virtually every phase of a food supply system. One large conglomerate can plant its own vast acreage. It can plow those fields with its own tractors, which can be fueled with its own oil. It can spray its crops with its own pesticides and utilize its own food additives. It can then process its food products in its own plants, package them in its own containers, and distribute them to grocery stores through its own marketing system.

Financing the entire operation are the resources of a conglomerate with billions in assets, hundreds of millions in tax-free oil income, and interests in banking and insurance companies. The conglomerate, according to reports filed with the Securities and Exchange Commission, had 1969 gross income of $464 million and taxable income of $88.7 million. Yet, due to Federal tax considerations, the conglomerate not only paid no taxes on that income, but enjoyed a tax credit of $13.3 million.

The type of food system being assembled by this and other conglomerates is of legitimate concern to independent farmers, who see every element of the food business acquiring market power unto themselves. On one side, they confront the buying power of giant food chains. Now they must compete with conglomerates that can take profits either from production, processing, or marketing. The individual farmer usually does not have such options. The giant competitors also benefit most from a variety of government subsidies on water, crops, and income taxes.

It is significant that, contrary to popular belief, the conglomerate operation does not generally grow food more inexpensively than the individual farmer. Numerous Department of Agriculture and university studies demonstrate that enormous acreage is not necessary to farm efficiency.

For example, maximum cost-saving production efficiency is generally reached at about 1,500 acres for cotton, less than 1,000 acres for corn and wheat, and 110 acres for peaches. In fact, studies show that the largest growers incur higher farm production costs as they employ more workers and layers of administration.

But conglomerates have the marketing power to make or break the market. They can sell below cost, as a loss leader, to secure other business, and sustain losses that no farmer can afford.

The Nation's fruit and vegetable growers are no strangers to the spirited competition of agribusiness. They have wrestled with the market power of chain stores and major food processors for years,

The conglomerate, however, represents a different kind of competition. The older agribusiness corporations are primarily food companies and must profit somewhere in the food distribution system. Such is not necessarily the case with the new conglomerate farmers, for whom millions of dollars of agribusiness investment may represent only a fraction of total holdings. Only 4 percent, for instance, of the previously mentioned conglomerate's sales are from agriculture.

In fact, the conglomerates may find their food investments profitable even without earning anything from them. The profits may be a derivative of land speculation, Federal crop subsidies, or Federal tax law. The aforementioned conglomerate received almost $1 million in 1970 cotton and sugar farm subsidies.

The conglomerates also utilize a variety of Federal tax provisions that permit them to benefit from tax-loss farming and then profit again by taking capital gains from land sales. Here again, the aforementioned conglomerate is developing six new California suburban communities on former farm land.

Other farmers, now removed from the conglomerate farmer phenomenon, fear the activity may soon encompass them.

Midwestern cattle and hog feeders—who now enjoy a satisfactory income from the business—are aware of the pattern in which independent poultry growers were virtually eliminated.

About 20 corporations, including several conglomerates, originally entered poultry production as a means of developing markets for their feed. Farmers were enlisted to grow the agribusiness poultry, using their feed.

According to Department of Agriculture studies, the poor but once independent poultry farmers are still poor as contract workers, earning about 54 cents an hour. A task force on agriculture called this corporate farm system "poultry peonage."

The committee believes this discussion—exclusively with respect to conglomerates in agriculture—serves to highlight a problem which is critical in nature, and justifies the inclusion of a conglomerate provision in the bill. This committee is aware that this type of activity is not unique to agriculture, but exists in a variety of industry categories. The bill would be equally applicable to all.

The committee's competence and jurisdiction in this area extends only to its responsibility for the Fair Labor Standards Act; but it is with respect to that Act, that the committee judgment is consistent in its support of the continued exemption of "small business" and the inclusion thereof of enterprises demonstrably capable of paying to their employees not less than the minimum wage rate and overtime compensation.

TOBACCO EMPLOYEES

Section 211 of the bill establishes an overtime exemption applicable to employees engaged in the sale at auction of certain types of green leaf tobacco, and in the general handling of certain other types of green leaf or perishable cigar leaf tobacco. The exemption permits the employment of an employee engaged in any such capacity for up to ten hours in any workday and forty-eight hours in any workweek during fourteen workweeks in the aggregate in a calendar year, without requiring the payment of overtime compensation. A similar exemption is provided in existing law, but section 204 of the bill would reduce and ultimately repeal such exemption but for this section of the bill.

ESTIMATE OF COST

Pursuant to the requirements of clause 7 of Rule XIII of the Rules of the House of Representatives, the committee estimates the cost of the legislation to be $3 million in each of the five fiscal years succeeding fiscal year 1973. The legislation cannot become effective prior to fiscal year 1974; therefore there is no cost to be incurred in fiscal year 1973.

No Government agency has submitted to the committee any cost estimate by which a comparison can be made with the committee estimate of the cost of this legislation. The estimate, however, is based upon the extension of employee coverage under the Fair Labor Standards Act which the bill provides, in relationship with the number of employees presently covered by the Act. That relationship is applied to the current cost of administering and enforcing the Act in determining the committee estimate.

The following is a description of the changes made in the Fair Labor Standards Act of 1938 (referred to in the description as the "Act") by H.R. 7935 as reported by the committee:

Section 1. Short Title; References to Act.—Subsection (a) provides that the bill when enacted may be cited as the "Fair Labor Standards Amendments of 1973". Subsection (b) is a technical provision.

Title I—Increases in Minimum Wage Rates

Section 101. Increase in Minimum Wage Rate for Employees Covered Before 1966.—This section amends section 6(a)(1) of the Act to provide an increase in the minimum wage rate for nonagricultural employees covered by the Act prior to the effective date of the 1966 amendments and for Federal employees covered by the 1966 amendments. The minimum wage rate for such employees is raised from not less than $1.60 an hour to (1) not less than $2 an hour beginning on the first day of the second full month after the date of enactment, or August 1, 1973, whichever occurs first, and (2) not less than $2.20 an hour beginning July 1, 1974.

Section 102. Increase in Minimum Wage Rate for Nonagricultural Employees Covered in 1966 and 1973.—This section amends section 6(b) of the Act to provide an increase in the minimum wage rate for nonagricultural employees (other than Federal employees) covered by the 1966 and 1973 amendments to the Act. The minimum wage rate for such employees is raised from not less than $1.60 an hour to (1) not less than $1.80 an hour beginning on the first day of the second full month after the date of enactment, or August 1, 1973, whichever occurs first, (2) not less than $2 an hour during the year beginning July 1, 1974, and (3) not less than $2.20 an hour beginning July 1, 1975.

Section 103. Increase in Minimum Wage Rate for Agricultural Employees.—This section amends section 6(a)(5) of the Act to provide an increase in the minimum wage rate for agricultural employees covered by the Act. The minimum wage rate for such employees is raised from not less than $1.30 an hour to (1) not less than $1.60 an hour beginning on the first day of the second full month after the date of enactment, or August 1, 1973, whichever occurs first, (2) not less than $1.80 an hour during the year beginning July 1, 1974, (3) not less than $2 an hour during the year beginning July 1, 1975, and (4) not less than $2.20 an hour beginning July 1, 1976.

Section 104. Government, Hotel, Motel, Restaurant, Food Service, and Conglomerate Employees in Puerto Rico and the Virgin Islands.—This section amends section 5 of the Act to provide that the minimum wage rate for hotel, motel, restaurant, food service, con-

glomerate, Government of the United States, and Virgin Islands government employees employed in Puerto Rico and the Virgin Islands shall be determined without regard to the wage order provisions of section 6(c) of the Act. Thus, the minimum wage rate for such employees shall be the applicable rate in effect under section 6(a)(1) or 6(b).

Section 105. Increases in Minimum Wage Rates for Other Employees in Puerto Rico and the Virgin Islands.—Subsection (a) of this section amends section 6(c) of the Act to provide for employees in Puerto Rico and the Virgin Islands covered by wage orders issued under that section minimum wage rate increases corresponding to the ones provided mainland United States employees. Except for subsidized agricultural employees (1) the increases are stated in terms of percentages of the most recent wage rate applicable to the employee before the effective date of the 1973 amendments, which wage rate is referred to as the employee's "base rate", and (2) there is continued the authority (described below) for special review committees to be established to provide wage rates different from the increased ones prescribed by section 6(c) (as amended by this section).

Employees covered before 1966.—Subsection (c)(2) of the Act provides for an initial 25 percent increase in the base rate applicable to employees covered by the Act prior to the 1966 amendments. Such increase shall (unless superseded) take effect 60 days after the effective date of the 1973 amendments or 1 year from the effective date of the most recent wage order, whichever is later. One year thereafter, an increase equal to 12.5 percent of the employee's base rate is provided.

Agricultural employees.—Subsection (c)(3)(A) provides for three 15.4 percent increases in the base rate applicable to agricultural employees covered by the Act. Such increase shall (unless superseded) take effect 60 days after the effective date of the 1973 amendments or 1 year from the date of the most recent wage order, whichever is later. One year after the effective date of the first increase an additional increase equal to 15.4 percent of the employee's base rate will take effect, and one year thereafter a third 15.4 percent increase will take effect.

In the case of an agricultural employee whose hourly wage is increased, above that required by a wage order, by a subsidy (or income supplement) paid, in whole or in part, by the Government of Puerto Rico, the three 15.4 percent increases shall be applied (as provided in subsection (c)(3)(B)) to the sum of (1) the employee's base rate and (2) the amount of the subsidy (or income supplement). The increases for these employees will take effect at the same time as the increases for other agricultural employees, but these increases may not be superseded by a wage rate recommended by a review committee.

Nonagricultural employees covered in 1966.—Subsection (c)(4) provides three 12.5 percent increases for nonagricultural employees first covered in 1966. The first 12.5 percent increase will take effect (unless superseded) 60 days after the effective date of the 1973 amendments or 1 year from the effective date of the most recent wage order, whichever is later; the second increase 1 year later; and the third increase 1 year thereafter.

Nonagricultural employees first covered in 1973.—Subsection (c)(5) provides for establishment of special industry committees to recommend minimum wage rates for employees newly covered by the 1973 amendments (other than employees subject to the amendment made by section 104, that is, hotel, motel, restaurant, food service, government, and conglomerate employees).

Wage floor and ceiling.—On and after the effective date of the first increase prescribed under subsection (c)(2), (3), (4), or (5), the minimum wage rate of employees covered by such increase may not be less than 60 percent of the otherwise applicable rate under section 6(a) (pre-1966 mainland employees) or 6(b) (1966 and 1973 nonagricultural employees). In the case of subsidized agricultural employees, the increase prescribed by subsection (c)(3)(B) may not exceed the applicable rate under section 6(a)(5).

Review procedure.—This procedure (first established by the 1961 amendments) permits any employer, or group of employers, employing a majority of the employees in an industry in Puerto Rico or the Virgin Islands to petition the Secretary for the appointment of a special industry committee to recommend the minimum wage rate or rates to be paid such employees in lieu of the rate or rates required as a result of the increases prescribed by subsection (c)(2), (c)(3)(A), or (c)(4), whichever is applicable. The Secretary may then appoint a special industry committee if he has reasonable cause to believe that employment in such industry will otherwise be substantially curtailed.

Other amendments.—Subsection (b) amends section 8 of the Act to provide that special industry committees shall recommend the otherwise applicable rate under section 6(a)(1), 6(a)(5), or 6(b) except where substantial documentary evidence, including pertinent financial information, demonstrates an inability to pay such rate. Section 10(a) of the Act is amended to provide that a court may, in reviewing a wage order issued under section 8, prescribe an appropriate minimum wage rate for the employees covered by such order.

Title II—Extension of Coverage; Revision of Exemptions

Section 201. Federal and State Employees.—Section 201(a) amends the definitions (in section 3 of the Act) of "employer", "enterprise", and "enterprise engaged in commerce or in the production of goods for commerce" to include the United States and any State or political subdivision of a State. These amendments result in the extension of minimum wage and overtime coverage to all Federal, State, and local public employees. Under the amendment made to section 13(b) of the Act, State and local public employees engaged in fire protection or law enforcement activities and Federal employees (other than those covered by the 1966 amendments) are exempt from overtime coverage. Section 18 of the Act is amended to include Federal employees in the Canal Zone under the section 6(a)(1) rate.

Section 202. Transit Employees.—Section 13(b)(7) of the Act is amended to reduce the overtime exemption currently in effect for any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motor bus carrier, whose rates and services are subject to regulation by a State or local agency. During the first year

after the effective date of the 1973 amendments, overtime compensation must be paid to such employees for hours worked in excess of 48 per week; during the second year after such effective date, for hours worked in excess of 44 per week; and beginning in the third year after such effective date, for hours worked in excess of 42 per week. Section 7 of the Act is amended to provide that in determining the hours of employment of such an employee for purposes of determining overtime compensation, hours employed in charter activities shall not be included if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) employment in such activities is not part of such employee's regular employment.

Section 203. Nursing Home Employees.—Sections 7 and 13(b)(8) of the Act are amended to provide an overtime exemption for nursing home employees for employment up to 8 hours in any workday and up to 80 hours in any 14-consecutive-day work period. This exemption is identical to that for hospital employees in section 7(j). The present overtime exemption in section 13(b)(8)) for nursing home employees is for employment up to 48 hours in any workweek.

Section 204. Seasonal Industry Employees.—This section reduces and ultimately repeals the overtime exemption for employees in seasonal industries and agricultural processing. Existing law (section 7(c)) provides an overtime exemption for employment in seasonal industries up to 10 hours in any workday or 50 hours in any workweek for not more than 10 workweeks during the calendar year. Existing law (section 7(d)) also provides an overtime exemption for employment in agricultural processing up to 10 hours in any workday or 48 hours in any workweek for not more than 10 workweeks during the calendar year. In the case of an employer who does not qualify for the overtime exemption under both categories, the exemption is extended to 14 workweeks during the calendar year for the category under which he does qualify.

The overtime exemption for employees in seasonal industries (provided by section 7(c)) is eliminated as follows:

(1) During the first year after the effective date of the 1973 amendments, overtime is required for employment over 9 hours (in lieu of 10) in any workday and 48 hours (in lieu of 50) in any workweek; and the period of the exemption is reduced from 10 workweeks (or 14 in the case of an employer who qualifies under only the section 7(c) exemption) in a calendar year to 7 workweeks (or 10 in the case of a single exemption) in a calendar year.

(2) During the second year from such effective date, overtime is required for employment over 9 hours in any workday and 48 hours in any workweek (note that the hour limits are the same as the limits for the preceding year); and the period of the exemption is reduced from 7 workweeks (or 10 in the case of a single exemption) in a calendar year to 5 workweeks (or 7 in the case of a single exemption) in a calendar year.

(3) After two years after such effective date the exemption under section 7(c) is repealed.

The overtime exemption for employees in agricultural processing (provided by section 7(d)) is eliminated as follows:

(1) During the first two years after such effective date, overtime is required for employment over 9 hours (in lieu of 10) in any workday and 48 hours in any workweek (note that the 48-hour workweek limitation is the same as existing law).

(2) During the first year from such effective date the period of the exemption is reduced from 10 workweeks (or 14 in the case of a single exemption) in a calendar year to 7 workweeks (or 10 in the case of a single exemption) in a calendar year; and during the second year from such effective date such period is reduced to 5 and 7 workweeks, respectively.

(3) After two years after such effective date the exemption under section 7(d) is repealed.

Section 205. Domestic Service Employees Employed in Households.—Subsection (a) of this section states a finding of Congress that domestic service in households directly affects commerce and that the minimum wage and overtime protections of the Act should have been available to such employees since its enactment.

Subsection (b) amends sections 6 and 7 of the Act to provide minimum wage and overtime protection for employees who (1) are employed in domestic service in households, and (2) are being paid for such service wages which will require the payment of the Social Security taxes (those imposed under chapter 21 of subtitle C of the Internal Revenue Code of 1954), and consequently provide Social Security benefits. Under section 3121(a)(7) of the Internal Revenue Code of 1954 and section 209(g) of the Social Security Act wages of less than $50 in a calendar quarter for domestic service in the private home of the employer will not require the payment of Social Security taxes and consequently do not qualify as wages for purposes of benefits under title II of the Social Security Act. The minimum wage rate required for such employees under the amendment to section 6 is that required under section 6(b), that is, not less than $1.80 an hour beginning on the first day of the second full month after the date of enactment, or August 1, 1973, whichever occurs first, not less than $2 an hour beginning July 1, 1974, and not less than $2.20 an hour beginning July 1, 1975. Under an amendment to section 13(a), the minimum wages and overtime is not applicable in the case of any such employee who resides in the household of his employer.

Section 206. Employment of Students.—This section amends sections 14(b) and (c) to provide for the employment of full-time students (regardless of age but in compliance with applicable child labor laws) at wage rates less than those prescribed by the Act.

Existing law (section 14(b)) permits the employment at rates below the applicable minimum wage of full-time students outside their school hours in retail or service establishments. Such employment is subject to the following: (1) such employment will be authorized only to the extent necessary to prevent curtailment of employment opportunities, (2) the employment must be in compliance with applicable child-labor laws and during the school year may not exceed 20 hours in any workweek, (3) the wage rate may not be less than 85 percent of the otherwise applicable minimum wage, (4) the proportion of students hours of employment to total hours of employment of all employees in any retail or service establishment may not exceed certain limitations, and (5) before a special certificate for such employment may be issued, the Secretary must find that the employment

will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under the certificate. Existing law (section 14(c)) also permits the employment of full-time students in agriculture at wage rates below the applicable minimum wage. Such employment is subject to the conditions described in clauses (1), (2), (3), and (5) of the preceding sentence.

This section's amendment to section 14 combines the current student exemptions for employment in retail-service establishments and in agriculture into an exemption for employment of students in any occupation other than one of the hazardous ones listed in section 14 (b) (1) or any other one designated by the Secretary.

Students may be employed at a wage rate of not less than 85 per centum of the applicable minimum wage rate or $1.60 an hour ($1.30 an hour in the case of employment in agriculture), whichever is the higher. As in existing law, the employment is to be under special certificates issued by the Secretary. Such special certificates shall provide (as in existing law) that such students shall, except during vacation periods, be employed on a part-time basis (not to exceed 20 hours in any workweek). In the case of an employer who employs five or more students under special certificates, the Secretary may not issue a special certificate for the employment of a number of students which will cause the total employed under certificates to exceed five unless he finds the employment of the student "will not create a substantial probability of reducing the full-time employment opportunities" of other workers. In the case of an employer who employs less than five students under special certificates, the Secretary may issue a special certificate if the employer certifies to the Secretary that he is not thereby reducing the full-time employment opportunities for other workers. Sections 15 (Prohibited Acts) and 16 (Penalties) of the Act would be applicable to an employer who violated the requirements of the new section 14(b). A summary of the special certificates issued under this provision is required to be included in the Secretary's annual report on the Act.

This section also provides that the Secretary may waive the minimum wage and overtime provisions of the Act with respect to a student employed by his elementary or secondary school, where such employment constitutes an integral part of the regular education program provided by the school.

Section 207. Laundry and Cleaning Establishments to be Considered Service Establishments for Certain Purposes.—This section requires the consideration of laundries and dry cleaning establishments as service establishments in the administration of sections 7(i) (relating to commission employees) and 13(a)(1) (relating to executive and administrative personnel and outside salesmen) of the Act.

Section 208. Maids and Custodial Employees of Hotels and Motels.—This section amends section 13(b)(8) to repeal the overtime exemption for maids and custodial employees of hotels and motels.

Section 209. Employees of Conglomerates.—This section amends section 13 to preclude the applicability of the minimum wage and overtime exemptions of subsection (a) and (b) of that section (except those relating to employees in executive, administrative, or professional capacities, or in the capacity of outside salesmen, and the overtime exemptions relating to employees whose hours of service are

subject to the provisions of the Motor Carrier Act, Interstate Commerce Act, or Railway Labor Act) to conglomerates with an annual gross volume of sales made or business done in excess of $10 million. A conglomerate is "an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $10 million (exclusive of excise taxes at the retail level which are separately stated)."

Section 210. Employees of Boat Dealers.—This section amends section 13(b)(10) to provide an overtime exemption for any salesman, partsman, or mechanic primarily engaged in selling or servicing boats if employed by a nonmanufacturing establishment primarily engaged in the business of selling boats to ultimate purchasers. Existing law provides an overtime exemption for employees engaged in related activities and employed by automobile, trailer, truck, farm implement, or aircraft dealerships.

Section 211. Tobacco Employees.—This section amends section 7 to retain the existing overtime exemption applicable to certain employees engaged in activities related to the sale of tobacco. The exemption would otherwise be reduced and ultimately repealed by amendment made by section 204 to section 7(c) of the Act (relating to seasonal industry employees).

Section 212. Substitute Parents for Institutionalized Children.—This section amends section 13(a) to establish an exemption from the minimum wage and overtime compensation provisions of the Act for an employee who is employed with his spouse by a nonprofit educational institution to serve as parents to children who have been placed in such institution by or through a public agency or by parents or guardians who are financially unable to care for and educate their children or children under their guardianship. The substitute parents must also reside in the facilities of the institution, receive room and board without cost, and jointly receive cash compensation at an annual rate of not less than $10,000.

Title III--Conforming Amendments: Effective Date and Regulations

Section 301. Conforming Amendments. This section amends section 6(e) of the Act to eliminate the minimum wage differential for employees employed under a service contract with the United States. Currently, certain linen service employees must receive not less than the section 6(a)(1) rate and the remainder are to receive the section 6(b) rate. Under the amendment, all would be required to be paid not less than the section 6(a)(1) rate. Additionally, technical amendments are made to section 8.

Section 302. Effective Date and Regulations.—This section provides that unless otherwise indicated, the effective date of the 1973 Amendments shall be the first day of the second full month which begins after the date of enactment, or August 1, 1973, whichever occurs first.

CHANGES IN EXISTING LAW MADE BY THE BILL AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 7935, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman) :

FAIR LABOR STANDARDS ACT OF 1938

AN ACT To provide for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Act of 1938."

FINDING AND DECLARATION OF POLICY

SEC. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

DEFINITIONS

SEC. 3. As used in this Act—

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(c) "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee [but shall not include the United States or any State or political subdivision of a State (except with respect to employees of a State, or a political subdivision thereof, employed (1) in a hospital, institution, or school referred to in the last sentence of subsection (r) of this section, or (2) in the operation of a railway or carrier referred to in such sentence), or any labor organization (other than when acting as an employer), of anyone acting in the capacity of officer or agent of such labor organization.] *and includes the United States or any State or political subdivision of a State, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.*

(e) "Employee" includes any individual employed by an employer, except that such term shall not, for the purposes of section 3(u), include—

(1) any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family, or

(2) any individual who is employed by an employer engaged in agriculture if such individual (A) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (B) commutes daily from his permanent residence to the farm on which he is so employed, and (C) has been employed in agriculture less than thirteen weeks during the preceding calendar year.

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Employ" includes to suffer or permit to work.

(h) "Industry" means a trade, business, industry, or branch thereof, or group of industries, in which individuals are gainfully employed.

(i) "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other man-

ner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.

(k) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(l) "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child labor age. The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

(m) "Wage" paid to any employee includes the reasonable cost, as determined by the Secretary of Labor, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees: *Provided*, That the cost of board, lodging, or other facilities shall not be included as a 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: *Provided further*, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on 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. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. 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.

(n) "Resale" shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: *Provided*, That the sale is recognized as a bona fide retail sale in the industry.

(o) HOURS WORKED.—In determining for the purposes of sections 6 and 7 the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.

(p) "American vessel" includes any vessel which is documented or numbered under the laws of the United States.

(q) "Secretary" means the Secretary of Labor.

(r) "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor: *Provided*, That, within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement, (1) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (2) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (3) that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments. For purposes of this subsection, the activities performed by any person or persons—

(1) in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit), or

(2) in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), *or*

(3) in connection with the activities of the Government of the United States or of any State or political subdivision of a State,

shall be deemed to be activities performed for a business purpose.

(s) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise which has employees engaged in commerce or in the production of goods for commerce, including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person, and which—

(1) during the period February 1, 1967, through January 31, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level which are separately stated) or is a gasoline service establishment whose annual gross volume of sales is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated), and beginning February 1, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated);

(2) is engaged in laundering, cleaning, or repairing clothing or fabrics;

(3) is engaged in the business of construction or reconstruction, or both; [or]

(4) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); *or*

(5) is an activity of the Government of the United States or of any State or political subdivision of a State.

Any establishment which has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise, and the sales of such establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

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

(u) "Man-day" means any day during which an employee performs any agricultural labor for not less than one hour.

(v) "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

(w) "Secondary school" means a day or residential school which provides secondary education, as determined under State law.

ADMINISTRATION

SEC. 4. (a) There is hereby created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division (in this Act referred to as the "Administrator"). The Administrator shall be appointed by the President, by and with the advice

and consent of the Senate, and shall receive compensation at the rate of $20,000 a year.

(b) The Secretary of Labor may, subject to the civil service laws, appoint such employees as he deems necessary to carry out his functions and duties under this Act and shall fix their compensation in accordance with the Classification Act of 1949, as amended. The Secretary may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Secretary in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the Secretary, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(c) The principal office of the Secretary shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place.

(d) The Secretary shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this Act as he may find advisable. Such report shall contain an evaluation and appraisal by the Secretary of the minimum wages established by this Act, together with his recommendations to the Congress. In making such evaluation and appraisal, the Secretary shall take into consideration any changes which may have occurred in the cost of living and in productivity and the level of wages in manufacturing, the ability of employers to absorb wage increases, and such other factors as he may deem pertinent. *Such report shall also include a summary of the special certificates issued under section 14(b).*

(e) Whenever the Secretary has reason to believe that in any industry under this Act the competition of foreign producers in United States markets or in markets abroad, or both, has resulted, or is likely to result, in increased unemployment in the United States, he shall undertake an investigation to gain full information with respect to the matter. If he determines such increased unemployment has in fact resulted, or is in fact likely to result, from such competition, he shall make a full and complete report of his findings and determinations to the President and to the Congress: *Provided*, That he may also include in such report information on the increased employment resulting from additional exports in any industry under this Act as he may determine to be pertinent to such report.

SPECIAL INDUSTRY COMMITTEES FOR PUERTO RICO AND THE VIRGIN ISLANDS

SEC. 5. (a) The Secretary of Labor shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce or employed in any enterprise engaged in commerce or in the produc-

tion of goods for commerce, or the Secretary may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under section 6 to employees therein engaged in commerce or in the production of goods for commerce or employed in any enterprise engaged in commerce or in the production of goods for commerce in particular industries. An industry committee appointed under this subsection shall be composed of residents of such island or islands where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of Puerto Rico and the Virgin Islands. In determining the minimum rate or rates of wages to be paid, and in determining classifications, such industry committees shall be subject to the provisions of section 8.

(b) An industry committee shall be appointed by the Secretary without regard to any other provisions of law regarding the appointment and compensation of employees of the United States. It shall include a number of disinterested persons representing the public, one of whom the Secretary shall designate as chairman, a like number of persons representing employees in the industry, and a like number representing employers in the industry. In the appointment of the persons representing each group, the Secretary shall give due regard to the geographical regions in which the industry is carried on.

(c) Two-thirds of the members of an industry committee shall constitute a quorum, and the decision of the committee shall require a vote of not less than a majority of all its members. Members of an industry committee shall receive as compensation, for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for each day actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and other expenses. The Secretary shall furnish the committee with adequate legal, stenographic, clerical, and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the committee.

(d) The Secretary shall submit to an industry committee from time to time such data as he may have available on the matters referred to it, and shall cause to be brought before it in connection with such matters any witnesses whom he deems material. An industry committee may summon other witnesses or call upon the Secretary to furnish additional information to aid it in its deliberations.

(e) *The provisions of this section, section 6(c), and section 8 shall not apply with respect to the minimum wage rate of any employee employed in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands, (2) by an establishment which is a hotel, motel, or restaurant, (3) by any other retail or service establishment which employs such employee primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs, or (4) by an establishment described in section 13(g). The minimum wage rate of such an employee shall be determined under this Act in the same manner as the minimum wage rate for employees employed in a State of the United States is determined under this Act. As used in the preceding sentence, the term "State" does not include a territory or possession of the United States.*

MINIMUM WAGES

Sec. 6. (a) Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

(1) not less than [$1.40] *$2* an hour during the [first year from the effective date of the Fair Labor Standards Amendments of 1966] *period ending June 30, 1974*, and not less than [$1.60] *$2.30* an hour [thereafter] *after June 30, 1974*, except as otherwise provided in this section;

(2) if such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer which shall yield, to the proportion or class of employee prescribed by regulation or order, not less than the applicable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The Secretary of Labor, or his authorized representative, shall have power to make such regulations or orders as are necessary or appropriate to carry out any of the provisions of this paragraph, including the power without limiting the generality of the foregoing, to define any operation or occupation which is performed by such home work employees in Puerto Rico or the Virgin Islands; to establish minimum piece rates for any operation or occupation so defined; to prescribe the method and procedure for ascertaining and promulgating minimum piece rates; to prescribe standards for employer piece rates, including the proportion or class of employees who shall receive not less than the minimum hourly wage rate; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers;

(3) if such employee is employed in American Samoa, in lieu of the rate or rates provided by this subsection or subsection (b), not less than the applicable rate established by the Secretary of Labor in accordance with recommendations of a special industry committee or committees which he shall appoint in the same manner and pursuant to the same provisions as are applicable to the special industry committees provided for Puerto Rico and the Virgin Islands by this Act as amended from time to time. Each such committee shall have the same powers and duties and shall apply the same standards with respect to the application of the provisions of this Act to employees employed in American Samoa as pertain to special industry committees established under section 5 with respect to employees employed in Puerto Rico or the Virgin Islands. The minimum wage rate thus established shall not exceed the rate prescribed in paragraph (1) of this subsection;

(4) if such employee is employed as a seaman on an American

vessel, not less than the rate which will provide to the employee, for the period covered by the wage payment, wages equal to compensation at the hourly rate prescribed by paragraph (1) of this subsection for all hours during such period when he was actually on duty (including periods aboard ship when the employee was on watch or was, at the direction of a superior officer, performing work or standing by, but not including off-duty periods which are provided pursuant to the employment agreement); or

[(5) if such employee is employed in agriculture, not less than $1 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1966, not less than $1.15 an hour during the second year from such date, and not less than $1.30 an hour thereafter.]

(5) if such employee is employed in agriculture, not less than—

(A) $1.60 an hour during the period ending June 30, 1974,
(B) $1.80 an hour during the year beginning July 1, 1974,
(C) $2 an hour during the year beginning July 1, 1975, and
(D) $2.20 an hour after June 30, 1976.

(b) [Every employer] *(1) Except as provided in paragraph (2), every employer* shall pay to each of his employees [(other than an employee to whom subsection (a) (5) applies)] who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this section by the amendments made to this Act by the Fair Labor Standards Amendments of 1966 *or the Fair Labor Standards Amendments of 1973* wages at the following rates:

[(1) not less than $1 an hour during the first year from the effective date of such amendments,

[(2) not less than $1.15 an hour during the second year from such date,

[(3) not less than $1.30 an hour during the third year from such date,

[(4) not less than $1.45 an hour during the fourth year from such date, and

[(5) not less than $1.60 an hour thereafter.]

(A) not less than $1.80 an hour during the period ending June 30, 1974,

(B) not less than $2 an hour during the year beginning July 1, 1974, and

(C) not less than $2.20 an hour after June 30, 1975.

(2) This subsection does not apply to—

(A) any employee to whom subsection (a) (5) applies,

(B) any employee who was brought within the purview of this section by the amendments to section 18 made by the Fair Labor Standards Amendments of 1966, and

(C) any Federal employee employed in connection with the operation of a hospital, institution, or school described in section 3(r)(1).

Subsection (a)(1) applies to the employees described in subparagraphs (B) and (C).

(c) (1) The rate or rates provided by subsections (a) and (b) of this section shall be superseded in the case of any employee in Puerto Rico or the Virgin Islands only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 5.

[(2) In the case of any such employee who is covered by such a wage order and to whom the rate or rates prescribed by subsection (a) would otherwise apply, the following rates shall apply:

[(A) The rate or rates applicable under the most recent wage order issued by the Secretary prior to the effective date of the Fair Labor Standards Amendments of 1966, increased by 12 per centum, unless such rate or rates are superseded by the rate or rates prescribed in a wage order issued by the Secretary pursuant to the recommendations of a review committee appointed under paragraph (C). Such rate or rates shall become effective sixty days after the effective date of the Fair Labor Standards Amendments of 1966 or one year from the effective date of the most recent wage order applicable to such employee theretofore issued by the Secretary pursuant to the recommendations of a special industry committee appointed under section 5, whichever is later.

[(B) Beginning one year after the applicable effective date under paragraph (A), not less than the rate or rates prescribed by paragraph (A), increased by an amount equal to 16 per centum of the rate or rates applicable under the most recent wage order issued by the Secretary prior to the effective date of the Fair Labor Standards Amendments of 1966, unless such rate or rates are superseded by the rate or rates prescribed in a wage order issued by the Secretary pursuant to the recommendations of a review committee appointed under paragraph (C).

[(C) Any employer, or group of employers, employing a majority of the employees in an industry in Puerto Rico or the Virgin Islands, may apply to the Secretary in writing for the appointment of a review committee to recommend the minimum rate or rates to be paid such employees in lieu of the rate or rates provided by paragraph (A) or (B). Any such application with respect to any rate or rates provided for under paragraph (A) shall be filed within sixty days following the enactment of the Fair Labor Standards Amendments of 1966 and any such application with respect to any rate or rates provided for under paragraph (B) shall be filed not more than one hundred and twenty days and not less than sixty days prior to the effective date of the applicable rate or rates under paragraph (B). The Secretary shall promptly consider such application and may appoint a review committee if he has reasonable cause to believe, on the basis of financial and other information contained in the application, that compliance with any applicable rate or rates prescribed by paragraph (A) or (B) will substantially curtail employment in such industry. The Secretary's decision upon any such application shall be final. Any wage order issued pursuant to the recommendations of a review committee appointed under this paragraph shall take effect on the applicable effective date provided in paragraph (A) or (B).

[(D) In the event a wage order has not been issued pursuant to the recommendation of a review committee prior to the applicable effective date under paragraph (A) or (B), the applicable percentage increase provided by any such paragraph shall take effect on the effective date prescribed therein, except with respect to the employees of an employer who filed an application under paragraph (C) and who files with the Secretary an undertaking with a surety or sureties satisfactory to the Secretary for payment to his employees of an amount sufficient to compensate such employees for the difference between the wages they actually receive and the wages to which they are entitled under this subsection. The Secretary shall be empowered to enforce such undertaking and any sums recovered by him shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to the employee or employees affected. Any such sum not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts.

[(3) In the case of any such employee to whom subsection (a)(5) or subsection (b) would otherwise apply, the Secretary shall within sixty days after the effective date of the Fair Labor Standards Amendments of 1966 appoint a special industry committee in accordance with section 5 to recommend the highest minimum wage rate or rates in accordance with the standards prescribed by section 8, but not in excess of the applicable rate provided by subsection (a)(5) or subsection (b), to be applicable to such employee in lieu of the rate or rates prescribed by subsection (a)(5) or subsection (b), as the case may be. The rate or rates recommended by the special industry committee shall be effective with respect to such employee upon the effective date of the wage order issued pursuant to such recommendation but not before sixty days after the effective date of the Fair Labor Standards Amendments of 1966.

[(4) The provisions of section 5 and section 8, relating to special industry committees, shall be applicable to review committees appointed under this subsection. The appointment of a review committee shall be in addition to and not in lieu of any special industry committee required to be appointed pursuant to the provisions of subsection (a) of section 8, except that no special industry committee shall hold any hearing within one year after a minimum wage rate or rates for such industry shall have been recommended to the Secretary by a review committee to be paid in lieu of the rate or rates provided for under paragraph (A) or (B). The minimum wage rate or rates prescribed by this subsection shall be in effect only for so long as and insofar as such minimum wage rate or rates have not been superseded by a wage order fixing a higher minimum wage rate or rates (but not in excess of the applicable rate prescribed in subsection (a) or subsection (b)) hereafter issued by the Secretary pursuant to the recommendation of a special industry committee.]

(2)(A) In the case of any such employee who is covered by such a wage order and to whom the rate or rates prescribed by subsection (a)(1) would otherwise apply, the following rates shall apply (unless superseded by a wage order issued under paragraph (6) and except as otherwise provided by paragraph (8)):

(i) Effective as prescribed in subparagraph (B), the employee's base rate, increased by 25 per centum.

(ii) Effective one year after the applicable effective date of the increase prescribed by clause (i), not less than the highest rate applicable to the employee on the day before the effective date of the increase prescribed by this clause, increased by an amount equal to 12.5 per centum of the employee's base rate.

(B) The effective date of the increase prescribed by subparagraph (A) (i) shall be the sixtieth day following the effective date of the Fair Labor Standards Amendments of 1973 or one year from the effective date of the most recent wage order applicable to the employee which the Secretary issued before the effective date of the Fair Labor Standards Amendments of 1973 pursuant to the recommendations of a special industry committee appointed under section 5, whichever is later.

(C) For purposes of this subsection, the term "base rate" means the rate applicable to an employee under the most recent wage order issued by the Secretary before the effective date of the Fair Labor Standards Amendments of 1973 pursuant to the recommendations of a special industry committee appointed pursuant to section 5.

(3) (A) In the case of any employee employed in agriculture who is covered by a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 5 and to whom the rate or rates prescribed by subsection (a) (5) would otherwise apply, the following rates shall apply (unless superseded by a wage order issued under paragraph (6) and except as otherwise provided in subparagraph (B) or paragraph (8)):

(i) Effective as prescribed in subparagraph (C), the employee's base rate, increased by 15.4 per centum.

(ii) Effective one year after the applicable effective date of the increase prescribed by clause (i), not less than the highest rate applicable to the employee on the day before the effective date of the increase prescribed by this clause, increased by an an amount equal to 15.4 per centum of the employee's base rate.

(iii) Effective one year after the applicable effective date of the increase prescribed by clause (ii), not less than the highest rate applicable to the employee on the day before the effective date of the increase prescribed by this clause, increased by an amount equal to 15.4 per centum of the employee's base rate.

(B) Notwithstanding subparagraph (A) of this paragraph, in the case of any employee employed in agriculture who is covered by a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 5, to whom the rate or rates prescribed by subsection (a) (5) would otherwise apply, and whose hourly wage is increased above the wage rate prescribed by such wage order by a subsidy (or income supplement) paid, in whole or in part, by the government of Puerto Rico, the following rates shall apply (except as otherwise provided in this subparagraph and in paragraph (8)):

(i) Effective as prescribed in subparagraph (C), the employee's base rate, increased by (I) the amount by which the employee's hourly wage rate is increased above his base rate by the

subsidy (or income supplement), and (II) 15.4 per centum of the sum of the employee's base rate and the amount referred to in subclause (I).

(ii) Effective one year after the applicable effective date of the increase prescribed by clause (i), not less than the highest rate applicable to the employee on the day before the effective date of the increase prescribed by this clause, increased by an amount to 15.4 per centum of the sum of the employee's base rate and the amount referred to in subclause (I) of clause (i).

(iii) Effective one year after the applicable effective date of the increase prescribed by clause (ii), not less than the highest rate applicable to the employee on the day before the effective date of the increase prescribed by this clause, increased by an amount equal to 15.4 per centum of the sum of the employee's base rate and the amount referred to in subclause (I) of clause (i).

Notwithstanding clause (i), (ii), or (iii) of this subparagraph, the minimum wage rate for any employee described in this subparagraph shall not be increased under such clause (i), (ii), or (iii) to a rate which exceeds the minimum wage rate in effect under subsection (a)(5).

(C) The effective date of the increase prescribed by subparagraphs (A)(i) and (B)(i) shall be the sixtieth day following the effective date of the Fair Labor Standards Amendments of 1973 or one year from the effective date of the most recent wage order applicable to the employee which the Secretary issued before the effective date of the Fair Labor Standards Amendments of 1973 pursuant to the recommendations of a special industry committee appointed under section 5, whichever is later.

(4)(A) Except as provided in section 5(e), in the case of any employee who is covered by a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 5 and to whom this section was made applicable by the amendments made to this Act by the Fair Labor Standards Amendments of 1966, the following rates shall apply (unless superseded by a wage order issued under paragraph (6) and except as otherwise provided by paragraph (8)):

(i) Effective as prescribed in subparagraph (B), the employee's base rate, increased by 12.5 per centum.

(ii) Effective one year after the applicable effective date of the increase prescribed by clause (i), not less than the highest rate applicable to the employee on the day before the effective date of the increase prescribed by this clause, increased by an amount equal to 12.5 per centum of the employee's base rate.

(iii) Effective one year after the effective date of the increase prescribed by clause (ii), not less than the highest rate applicable to the employee on the day before the effective date of the increase prescribed by this clause, increased by an amount equal to 12.5 per centum of the employee's base rate.

(B) The effective date of the increase prescribed by subparagraph (A)(i) shall be the sixtieth day following the effective date of the Fair Labor Standards Amendments of 1973 or one year from the effective date of the most recent wage order applicable to the employee

which the Secretary issued before the effective date of the Fair Labor Standards Amendments of 1973 pursuant to the recommendations of a special industry committee appointed under section 5, whichever is later.

(5) Except as provided in section 5(e), in the case of any employee employed in Puerto Rico or the Virgin Islands to whom this section was made applicable by the amendments made to this Act by the Fair Labor Standards Amendments of 1973, the Secretary shall, as soon as practicable after the date of enactment of the Fair Labor Standards Amendments of 1973, appoint a special industry committee in accordance with section 5 to recommend the highest minimum wage rate or rates, in accordance with the standards prescribed by section 8, to be applicable to such employee in lieu of the rate or rates prescribed by subsection (b). The rate or rates recommended by the special industry committee shall be effective with respect to such employee upon the effective date of the wage order issued pursuant to such recommendation, but not before sixty days after the effective date of the Fair Labor Standards Amendments of 1973.

(6) (A) Any employer, or group of employers, employing a majority of the employees in an industry in Puerto Rico or the Virgin Islands for whom wage rate increases are prescribed by paragraph (2), (3) (A), or (4) may apply to the Secretary in writing for the appointment of a special industry committee to recommend the minimum wage rate or rates to be paid such employees in lieu of the rate or rates prescribed by paragraph (2), (3) (A), or (4) whichever is applicable. Any such application shall be filed—

(i) in the case of the first of such increases, not less than thirty days following the date of enactment of the Fair Labor Standards Amendments of 1973, and

(ii) in the case of each succeeding increase, not more than one hundred and twenty days and not less than sixty days prior to the effective date of such increase.

(B) The Secretary shall promptly consider any application duly filed under subparagraph (A) of this paragraph for appointment of a special industry committee and may appoint such a special industry committee if he has a reasonable cause to believe, on the basis of financial and other information contained in the application, that compliance with any applicable rate or rates prescribed by paragraph (2), (3) (A), or (4), as the case may be, will substantially curtail employment in the industry with respect to which the application was filed. The Secretary's decision upon any such application shall be final. In appointing a special industry committee pursuant to this paragraph the Secretary shall, to the extent possible, appoint persons who were members of the special industry committee most recently convened under section 8 for such industry. Any wage order issued pursuant to the recommendations of a special industry committee appointed under this paragraph shall take effect on the applicable effective date provided in paragraph (2), (3), or (4), as the case may be. If a wage order has not been issued pursuant to the recommendation of a special industry committee appointed under this paragraph prior to the applicable effective date under paragraph (2), (3), or (4), the applicable percentage increase provided by paragraph (2),

(3), or (4) shall take effect on the effective date prescribed therein, except with respect to the employees of an employer who filed an application for appointment under this paragraph of a special industry committee and who files with the Secretary an undertaking with a surety or sureties satisfactory to the Secretary for payment to his employees of an amount sufficient to compensate such employees for the difference between the wages they actually receive and the wages to which they are entitled under this subsection. The Secretary shall be empowered to enforce such undertaking and any sums recovered by him shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to the employee or employees affected. Any such sum not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts.

(C) The provisions of section 5 and section 8, relating to special industry committees, shall be applicable to special industry committees appointed under this paragraph. The appointment of a special industry committee under this paragraph shall be in addition to and not in lieu of any special industry committee required to be convened pursuant to section 8(a), except that no special industry committee convened under that section shall hold any hearing within one year after a minimum wage rate or rates for such industry shall have been recommended to the Secretary, by a special industry committee appointed under this paragraph, to be paid in lieu of the rate or rates prescribed by paragraph (2), (3)(A), or (4), as the case may be.

(7) The minimum wage rate or rates prescribed by this subsection shall be in effect only for so long as and insofar as such minimum wage rate or rates have not been superseded by a wage order fixing a higher minimum wage rate or rates (but not in excess of the applicable rate prescribed in subsection (a) or (b)) hereafter issued by the Secretary pursuant to the recommendation of a special industry committee appointed under section 5.

(8) Notwithstanding any other provision of this subsection, the wage rate of any employee in Puerto Rico or the Virgin Islands which is subject to increase under paragraph (2), (3), (4), or (5) of this subsection shall, on and after the effective date of the first wage increase under the paragraph which applies to the employee's wage rate, be not less than 60 per centum of the wage rate that (but for this subsection) would be applicable to such employee under subsection (a) or (b) of this section.

(d)(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation

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of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this Act.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(e) [(1)] Notwithstanding the provisions of section 13 of this Act (except subsections (a)(1) and (f) thereof), every employer providing any contract services [(other than linen supply services)] under a contract with the United States or any subcontract thereunder shall pay to each of his employees whose rate of pay is not governed by the Service Contract Act of 1965 (41 U.S.C. 351–357) or to whom subsection (a)(1) of this section is not applicable, wages at [rates] *a rate* not less than the [rates provided for in subsection (b) of this section] *rate provided for in such subsection.*

[(2) Notwithstanding the provisions of section 13 of this Act (except subsections (a)(1) and (f) thereof) and the provisions of the Service Contract Act of 1965, every employer in an establishment providing linen supply services to the United States under a contract with the United States or any subcontract thereunder shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (b), except that if more than 50 per centum of the gross annual dollar volume of sales made or business done by such establishment is derived from providing such linen supply services under any such contracts or subcontracts, such employer shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (a)(1) of this section.]

(f) Any employee who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under section 6(b) unless such employee's compensation for such service would not because of section 209(g) of the Social Security Act, constitute "wages" for purposes of title II of such Act.

MAXIMUM HOURS

SEC. 7. (a)(1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) No employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this subsection by the amendments made to this Act by the Fair Labor Standards Amendments of 1966—

(A) for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966,

(B) for a workweek longer than forty-two hours during the second year from such date, or

(C) for a workweek longer than forty hours after the expiration of the second year from such date.

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand and forty hours during any period of twenty-six consecutive weeks, or

(2) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board which provides that during a specified period of fifty-two consecutive weeks the employee shall be employed not more than two thousand two hundred and forty hours and shall be guaranteed not less than one thousand eight hundred and forty hours (or not less than forty-six weeks at the normal number of hours worked per week, but not less than thirty hours per week) and not more than two thousand and eighty hours of employment for which he shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum work-week applicable to such employee under subsection (a) or two thousand and eighty in such period at rates not less than one and one-half times the regular rate at which he is employed; or

(3) by an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products if—

(A) the annual gross volume of sales of such enterprise is less than $1,000,000 exclusive of excise taxes,

(B) more than 75 per centum of such enterprise's annual dollar volume of sales is made within the State in which such enterprise is located, and

(C) not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are

engaged in the bulk distribution of such products for resale, and such employee receives compensation for employment in excess of forty hours in any workweek at a rate not less than one and one-half times the minimum wage rate applicable to him under section 6,

and if such employee receives compensation for employment in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(c) For a period or periods of not more than [ten] *seven* workweeks in the aggregate in any calendar year, or [fourteen] *ten* workweeks in the aggregate in the case of an employer who does not qualify for the exemption in subsection (d) of this section, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection if such employee (1) is employed by such employer in an industry found by the Secretary to be of a seasonal nature, and (2) receives compensation for employment by such employer in excess of [ten] *nine* hours in any workday, or for employment by such employer in excess of [fifty] *forty-eight* hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(d) For a period or periods of not more than [ten] *seven* workweeks in the aggregate in any calendar year, or [fourteen] *ten* workweeks in the aggregate in the case of an employer who does not qualify for the exemption in subsection (c) of this section, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if such employee—

(1) is employed by such employer in an enterprise which is in an industry found by the Secretary—

(A) to be characterized by marked annually recurring seasonal peaks of operation at the places of first marketing or first processing of agricultural or horticultural commodities from farms if such industry is engaged in the handling, packing, preparing, storing, first processing, or canning of any perishable agricultural or horticultural commodities in their raw or natural state, or

(B) to be of a seasonal nature and engaged in the handling, packing, storing, preparing, first processing, or canning of any perishable agricultural or horticultural commodities in their raw or natural state, and

(2) receives compensation for employment by such employer in excess of [ten] *nine* hours in any workday, or for employment in excess of forty-eight hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

[1] (c) For a period or periods of not more than [seven] *five* workweeks in the aggregate in any calendar year, or [ten] *seven* workweeks in the aggregate in the case of an employer who does not qualify for the exemption in subsection (d) of this section, any employer may

[1] Sections 7(c) and 7(d) are further changed effective one year after the effective date of the Fair Labor Standards Amendments of 1973.

employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection if such employee (1) is employed by such employer in an industry found by the Secretary to be of a seasonal nature, and (2) receives compensation for employment by such employer in excess of nine hours in any workday, or for employment by such employer in excess of forty-eight hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

[1] (d) For a period or periods of not more than [seven] *five* workweeks in the aggregate in any calendar year, or [ten] *seven* workweeks in the aggregate in the case of an employer who does not qualify for the exemption in subsection (c) of this section, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if such employee—

(1) is employed by such employer in an enterprise which is in an industry found by the Secretary—

(A) to be characterized by marked annually recurring seasonal peaks of operation at the places of first marketing or first processing of agricultural or horticultural commodities from farms if such industry is engaged in the handling, packing, preparing, storing, first processing, or canning of any perishable agricultural or horticultural commodities in their raw or natural state, or

(B) to be of a seasonal nature and engaged in the handling, packing, storing, preparing, first processing, or canning of any perishable agricultural or horticultural commodities in their raw or natural state, and

(2) receives compensation for employment by such employer in excess of nine hours in any workday, or for employment in excess of forty-eight hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

[2] [(c) For a period or periods of not more than five workweeks in the aggregate in any calendar year, or seven workweeks in the aggregate in the case of an employer who does not qualify for the exemption in subsection (d) of this section, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection if such employee (1) is employed by such employer in an industry found by the Secretary to be of a seasonal nature, and (2) receives compensation for employment by such employer in excess of nine hours in any workday, or for employment by such employer in excess of forty-eight hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

[2] [(d) For a period or periods of not more than five workweeks in the aggregate in any calendar year, or seven workweeks in the aggre-

[1] Sections 7(c) and 7(d) are further changed effective one year after the effective date of the Fair Labor Standards Amendments of 1973.

[2] Sections 7(c) and 7(d) are repealed effective two years after the effective date of the Fair Labor Standards Amendments of 1973.

gate in the case of an employer who does not qualify for the exemption in subsection (c) of this section, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if such employee—

[(1) is employed by such employer in an enterprise which is in an industry found by the Secretary—

[(A) to be characterized by marked annually recurring seasonal peaks of operation at the places of first marketing or first processing of agricultural or horticultural commodities from farms if such industry is engaged in the handling, packing, preparing, storing, first processing, or canning of any perishable agricultural or horticultural commodities in their raw or natural state, or

[(B) to be of a seasonal nature and engaged in the handling, packing, storing, preparing, first processing, or canning of any perishable agricultural or horticultural commodities in their raw or natural state, and

[(2) receives compensation for employment by such employer in excess of nine hours in any workday, or for employment in excess of forty-eight hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.]

(e) As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include—

(1) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(2) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;

(3) sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Secretary of Labor set forth in appropriate regulation which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees

are defined and delimited by regulations of the Secretary) paid to performers, including announcers, on radio and television programs;

(4) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age retirement, life, accident, or health insurance or similar benefits for employees:

(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in non-overtime hours on other days; or

(7) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsection (a)), where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek.

(f) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in subsection (a) or (b) of section 6 (whichever may be applicable) and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek, and (2) provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

(g) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection—

(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the

bona fide piece rates applicable to the same work when performed during nonovertime hours; or

(2) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: *Provided*, That the rate so established shall be authorized by regulation by the Secretary of Labor as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(h) Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) shall be creditable toward overtime compensation payable pursuant to this section.

(i) No employer shall be deemed to have violated subsection (a) by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 6, and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(j) No employer engaged in the operation of a hospital *or an establishment which is an institution (other than a hospital) primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises* shall be deemed to have violated subsection (a) if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of fourteen consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for his employment in excess of eight hours in any workday and in excess of eighty hours in such fourteen-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(k) In the case of an employee of an employer engaged in the business of operating a street, suburban, or interurban electric railway, or local trolley or motorbus carrier, whose rates and services are subject to regulation by a State or local agency, in determining the hours of

employment of such an employee to which the rate prescribed by subsection (a) applies there shall be excluded the hours such employee was employed in charter activities by such employer if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) employment in such activities is not part of such employee's regular employment.

(l) Subsection (a) shall apply with respect to any employee who in any workweek is employed in domestic service in a household unless such employee's compensation for such service would not because of section 209(g) of the Social Security Act, constitute "wages" for purposes of title II of such Act.

(m) For a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if such employee—

(1) is employed by such employer—

(A) to provide services (including stripping and grading) necessary and incidental to the sale at auction of green leaf tobacco of type 11, 12, 13, 14, 21, 22, 23, 24, 31, 35, 36, or 37 (as such types are defined by the Secretary of Agriculture), or in auction sale, buying, handling, stemming, redrying, packing, and storing of such tobacco,

(B) in auction sale, buying, handling, sorting, grading, packing, or storing green leaf tobacco of type 32 (as such type may be defined by the Secretary of Agriculture), or

(C) in auction sale, buying, handling, stripping, sorting, grading, sizing, packing, or stemming prior to packing, of perishable cigar leaf tobacco of type 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 61, or 62 (as such types are defined by the Secretary of Agriculture); and

(2) receives for—

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

An employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section.

WAGE ORDERS IN PUERTO RICO AND THE VIRGIN ISLANDS

SEC. 8. (a) The policy of this Act with respect to industries or enterprises in Puerto Rico and the Virgin Islands engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the objective of the minimum wage [prescribed in paragraph (1) of section 6(a) in each such industry] *rate which would apply in each such industry under paragraph (1) or (5) of section 6(a) but for section 6(c)*. The Secretary of Labor shall from time to time convene an in-

dustry committee or committees, appointed pursuant to section 5, and any such industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 6 by employers in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce in any such industry or classifications therein. Minimum rates of wages established in accordance with this section which are not equal to [the minimum wage rate prescribed in paragraph (1) of section 6(a)] *the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) of section 6(a)* shall be reviewed by such a committee once during each biennial period, beginning with the biennial period commencing July 1, 1958, except that the Secretary, in his discretion, may order an additional review during any such biennial period.

(b) Upon the convening of any such industry committee, the Secretary shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, shall after due notice hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this Act. The committee shall recommend to the Secretary the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands; *except that the committee shall recommend to the Secretary the minimum wage rate prescribed in section 6 (a) or (b), which would be applicable but for section 6(c), unless there is substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years, in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage.*

(c) The industry committee shall recommend such reasonable classifications within any industry as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum wage rate (not in excess of that [prescribed in paragraph (1) of section 6(a)] *in effect under paragraph (1) or (5) of section 6(a) (as the case may be)*) which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum wage rate which the committee determines will not substantially curtail employment in such classification. In determining whether such classifications should be made in any industry, in making such classifications, and in determining the minimum wage rates for such classifications, no classifications shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee shall consider among other relevant factors the following:

(1) competitive conditions as affected by transportation, living, and production costs;

(2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

No classification shall be made under this section on the basis of age or sex.

(d) The industry committee shall file with the Secretary a report containing its findings of fact and recommendations with respect to the matters referred to it. Upon the filing of such report, the Secretary shall publish such recommendations in the Federal Register and shall provide by order that the recommendations contained in such report shall take effect upon the expiration of 15 days after the date of such publications.

(e) Orders issued under this section shall define the industries and classifications therein to which they are to apply, and shall contain such terms and conditions as the Secretary finds necessary to carry out the purposes of such orders, to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates established therein.

(f) Due notice of any hearing provided for in this section shall be given by publication in the Federal Register and by such other means as the Secretary deems reasonably calculated to give general notice to interested persons.

ATTENDANCE OF WITNESSES

SEC. 9. For the purpose of any hearing or investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U.S.C., 1934 edition, title 15, secs. 49 and 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary of Labor and the industry committees.

COURT REVIEW

SEC. 10. (a) Any person aggrieved by an order of the Secretary issued under section 8 may obtain a review of such order in the United States Court of Appeals for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within 60 days after the entry of such order a written petition praying that the order of the Secretary be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record of the industry committee upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify (*including provision for the payment of an appropriate minimum wage rate*), or set aside such order in whole or in part, so far as it is applicable to the petitioner. The review by the court shall be limited to questions of law, and findings

of fact by such industry committee when supported by substantial evidence shall be conclusive. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been urged before such industry committee or unless there were reasonable grounds for failure so to do. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce such evidence in the proceedings before such industry committee, the court may order such additional evidence to be taken before an industry committee and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. Such industry committee may modify the initial findings by reason of the additional evidence so taken, and shall file with the court such modified or new findings which if supported by substantial evidence shall be conclusive, and shall also file its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order. The court shall not grant any stay of the order unless the person complaining of such order shall file in court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the order, in the event such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while such stay is in effect.

INVESTIGATIONS, INSPECTIONS, RECORDS, AND HOMEWORK REGULATIONS

SEC. 11. (a) The Secretary of Labor or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this Act, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of the provisions of this Act. Except as provided in section 12 and in subsection (b) of this section, the Secretary shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 12, the Secretary shall bring all actions under section 17 to restrain violations of this Act.

(b) With the consent and cooperation of State agencies charged with the administration of State labor laws, the Secretary of Labor may, for the purpose of carrying out his functions and duties under this Act, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reim-

burse such State and local agencies and their employees for services rendered for such purposes.

(c) Every employer subject to any provision of this Act or of any order issued under this Act shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Secretary as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this Act or the regulations or orders thereunder.

(d) The Secretary is authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act, and all existing regulations or orders of the Administrator relating to industrial homework are hereby continued in full force and effect.

CHILD LABOR PROVISIONS

SEC. 12. (a) No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed: *Provided*, That any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection: *And provided further*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

(b) The Secretary of Labor, or any of his authorized representatives, shall make all investigations and inspections under section 11(a) with respect to the employment of minors, and, subject to the direction and control of the Attorney General, shall bring all actions under section 17 to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor, and shall administer all other provisions of this Act relating to oppressive child labor.

(c) No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.

EXEMPTIONS

SEC. 13. (a) The provisions of sections 6 (except section 6(d) in the case of paragraph (1) of this subsection) and 7 shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee em-

ployed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

(2) any employee employed by any retail or service establishment (except an establishment or employee engaged in laundering, cleaning or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described in section 3(s)(4)), if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section 3(s) or such establishment has an annual dollar volume of sales which is less than $250,000 (exclusive of excise taxes at the retail level which are separately stated). A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry; or

(3) any employee employed by an establishment which is an amusement or recreational establishment, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33⅓ per centum of its average receipts for the other six months of such year; or

(4) any employee employed by an establishment which qualifies as an exempt retail establishment under clause (2) of this subsection and is recognized as a retail establishment in the particular industry notwithstanding that such establishment makes or processes at the retail establishment the goods that it sells: *Provided*, That more than 85 per centum of such establishment's annual dollar volume of sales of goods so made or processed is made within the State in which the establishment is located; or

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than

five hundred man-days of agricultural labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock; or

(7) any employee to the extent that such employee is exempted by regulations, order, or certificate of the Secretary issued under section 14; or

(8) any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or

(9) any employee employed by an establishment which is a motion picture theater; or

(10) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

(11) any employee or proprietor in a retail or service establishment which qualifies as an exempt retail or service establishment under clause (2) of this subsection with respect to whom the provisions of sections 6 and 7 would not otherwise apply, engaged in handling telegraphic messages for the public under an agency or contract arrangement with a telegraph company where the telegraph message revenue of such agency does not exceed $500 a month; or

(12) any employee employed as a seaman on a vessel other than an American vessel; or

(13) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight; or

(14) any agricultural employee employed in the growing and harvesting of shade-grown tobacco who is engaged in the processing (including, but not limited to, drying, curing, fermenting,

bulking, rebulking, sorting, grading, aging, and baling) of such tobacco, prior to the stemming process, for use as cigar wrapper tobacco [.]; *or*

(15) any employee who is employed in domestic service in a household and who resides in such household; or

(16) any employee who is employed with his spouse by a nonprofit institution which is primarily operated to care for and educate children who have been placed with the institution by or through a public agency or by parents or guardians who are financially unable to care for and educate their children or children under their guardianship (as the case may be), if such employee and his spouse (A) are employed to serve as the parents of such children who reside in facilities of the institution, (B) reside in such facilities and receive, without cost, board and lodging from such institution, and (C) are together compensated, on a cash basis, at an annual rate of not less than $10,000.

(b) The provisions of section 7 shall not apply with respect to—

(1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or

(2) any employee of an employer subject to the provisions of part I of the Interstate Commerce Act; or

(3) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act; or

(4) any employee employed in the canning, processing, marketing, freezing, curing, storing, packing for shipment, or distributing of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any byproduct thereof; or

(5) any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or

(6) any employee employed as a seaman; or

(7) any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency *and if such employee receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed*; or

[1] (7) any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency and if such employee receives compensation for employment in excess of [forty-eight] *forty-four* hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

[2] (7) any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban

[1] Section 13(b)(7) is further changed effective one year after the effective date of the Fair Labor Standards Amendments of 1973.
[2] Section 13(b)(7) is further changed 2 years after the effective date of the Fair Labor Standards Amendments of 1973.

or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency and if such employee receives compensation for employment in excess of [forty-four] *forty-two* hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

(8) any employee (*other than an employee of a hotel or motel who is employed to perform maid or custodial services*) employed by an establishment which is a hotel, motel, or restaurant; or [any employee who (A) is employed by an establishment which is an institution (other than a hospital) primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises, and (B) receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or]

(9) any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Bureau of the Budget, which has a total population in excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or

(10) any salesman, partsman, or mechanic primarily engaged in selling or servicing *boats*, automobiles, trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling *boats or* such vehicles to ultimate purchasers; or

(11) any employee employed as a driver or drivers' helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 7(a); or

(12) any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water for agricultural purposes; or

(13) any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee (A) is primarily employed during his workweek in agriculture by such farmer, and (B) is paid for his employment in connection with such livestock auction operations employee in connection with such livestock auction operations at

a wage rate not less than that prescribed by section 6(a)(1); or

(14) any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed in the establishment in such operations; or

(15) any employee engaged in ginning of cotton for market, in any place of employment located in a county where cotton is grown in commercial quantities, or in the processing of sugar beets, sugar-beet molasses, sugarcane, or maple sap, into sugar (other than refined sugar) or syrup; or

(16) any employee engaged (A) in the transportation and preparation for transportation of fruits or vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the same State, or (B) in transportation, whether or not performed by the farmer, between the farm and any point within the same State of persons employed or to be employed in the harvesting of fruits or vegetables; or

(17) any driver employed by an employer engaged in the business of operating taxicabs; or

(18) any employee of a retail or service establishment who is employed primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs; or

(19) any employee of a bowling establishment if such employee receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed [.]; *or*

(20) any employee of a State or political subdivision of a State engaged in fire protection or law enforcement activities; or

[(21) any Federal employee other than a Federal employee who was brought within the purview of section 7 by the amendments made by the Fair Labor Standards Amendments of 1966.]

(c)(1) Except as provided in paragraph (2), the provisions of section 12 relating to child labor shall not apply with respect to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed.

(2) The provisions of section 12 relating to child labor shall apply to an employee below the age of sixteen employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

(3) The provisions of section 12 relating to child labor shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.

(d) The provisions of sections 6, 7, and 12 shall not apply with respect to any employee engaged in the delivery of newspapers to the

consumer or to any homeworker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

(e) The provisions of section 7 shall not apply with respect to employees for whom the Secretary of Labor is authorized to establish minimum wage rates as provided in section 6(a)(3), except with respect to employees for whom such rates are in effect; and with respect to such employees the Secretary may make rules and regulations providing reasonable limitations and allowing reasonable variations, tolerances, and exemptions to and from any or all of the provisions of section 7 if he shall find, after a public hearing on the matter, and taking into account the factors set forth in section 6(a)(3), that economic conditions warrant such action.

(f) The provisions of sections 6, 7, 11, and 12 shall not apply with respect to any employee whose services during the workweek are performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: a State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; Johnston Island; and the Canal Zone.

(g) Subsection (a) (other than paragraph (1) thereof) and subsection (b) (other than paragraphs (1), (2), and (3) thereof) shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $10,000,000 (exclusive of excise taxes at the retail level which are separately stated).

LEARNERS, APPRENTICES, STUDENTS, AND HANDICAPPED WORKERS

SEC. 14. (a) The Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 6 and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.

[(b) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment of full-time students, regardless of age but in compliance with applicable child labor laws, on a part-time

basis in retail or service establishments (not to exceed twenty hours in any workweek) or on a part-time or a full-time basis in such establishments during school vacations, under special certificates issued pursuant to regulations of the Secretary, at a wage rate not less than 85 per centum of the minimum wage applicable under section 6, except that the proportion of student hours of employment to total hours of employment of all employees in any establishment may not exceed (1) such proportion for the corresponding month of the twelve-month period preceding May 1, 1961, (2) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered by this Act for the first time on or after the effective date of the Fair Labor Standards Amendments of 1966, such proportion for the corresponding month of the twelve-month period immediately prior to such date, or (3) in the case of a retail or service establishment coming into existence after May 1, 1961, or a retail or service establishment for which records of student hours worked are not available, a proportion of student hours of employment to total hours of employment of all employees based on the practice during the twelve-month period preceding May 1, 1961, in (A) similar establishments of the same employer in the same general metropolitan area in which the new establishment is located, (B) similar establishments of the same employer in the same or nearby counties if the new establishment is not in a metropolitan area, or (C) other establishments of the same general character operating in the community or the nearest comparable community. Before the Secretary may issue a certificate under this subsection he must find that such employment will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under this subsection.]

(*b*)(*1*) *The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 or not less than $1.60 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 (c)) of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation other than—*

(*A*) *occupations in mining,*
(*B*) *occupations in manufacturing,*
(*C*) *occupations in warehousing and storage,*
(*D*) *occupations in construction,*
(*E*) *the occupation of a longshoreman,*
(*F*) *occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components,*
(*G*) *the occupation of a motor vehicle driver or outside helper,*
(*H*) *logging occupations and occupations in the operation of any sawmill, lathmill, shingle mill, or cooperage stock mill,*
(*I*) *occupations involved in the operation of power-driven woodworking machines,*

(J) occupations involving exposure to radioactive substances and ionizing radiation,

(K) occupations involved in the operation of power-driven hoisting apparatus,

(L) occupations involved in the operation of power-driven metal forming, punching, and shearing machines,

(M) occupations involving slaughtering, meat packing or processing, or rendering,

(N) occupations involved in the operation of bakery machines,

(O) occupations involved in the operation of paper products machines,

(P) occupations involved in the manufacture of brick, tile, or kindred products,

(Q) occupations involved in the operation of circular saws band saws, or guillotine shears,

(R) occupations involved in wrecking, demolition, or ship-breaking operations,

(S) occupations in roofing operations,

(T) occupations in excavation operations, or

(U) any other occupation determined by the Secretary to be particularly hazardous for the employment of such students.

(2) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the wage rate in effect under section 6(a)(5) or not less than $1.30 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at a wage rate not less than 85 per centum of the wage rate in effect under section 6(c)(3)) of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture other than an occupation determined by the Secretary to be particularly hazardous for the employment of such students.

(3)(A) A special certificate issued under paragraph (1) or (2) shall provide that the student for whom it is issued shall, except during vacation periods, be employed on a part-time basis and not in excess of twenty hours in any workweek.

(B) If the issuance of a special certificate under paragrah (1) or (2) for an employer will cause the number of students employed by such employer under special certificates issued under this subsection to exceed four, the Secretary may not issue such a special certificate for the employment of a student by such employer unless the Secretary finds employment of such student will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection. If the issuance of a special certificate under this subsection for an employer will not cause the number of students employed by such employer under special certificates issued under this subsection to exceed four, the Secretary may issue a special certificate under this subsection for the employment of a student by such employer if such employer certifies to the Secretary that the employment of such student will not reduce the full-time employment opportunities

of persons other than those employed under special certificates issued under this subsection.

[(c) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by certificate or order provide for the employment of full-time students, regardless of age but in compliance with applicable child labor laws, on a part-time basis in agriculture (not to exceed twenty hours in any work-week) or on a part-time or a full-time basis in agriculture during school vacations, at a wage rate not less than 85 per centum of the minimum wage applicable under section 6. Before the Secretary may issue a certificate or order under this subsection he must find that such employment will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under this subsection.]

[(d)(1)](*c*)(*1*) Except as otherwise provided in paragraphs (2) and (3) of this subsection, the Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment under special certificates of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age or physical or mental deficiency or injury, at wages which are lower than the minimum wage applicable under section 6 of this Act but not less than 50 per centum of such wage and which are commensurate with those paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

(2) The Secretary, pursuant to such regulations as he shall prescribe and upon certification of the State agency administering or supervising the administration of vocational rehabilitation services, may issue special certificates for the employment of—

(A) handicapped workers engaged in work which is incidental to training or evaluation programs, and

(B) multihandicapped individuals and other individuals whose earning capacity is so severely impaired that they are unable to engage in competitive employment,

at wages which are less than those required by this subsection and which are related to the worker's productivity.

(3)(A) The Secretary may by regulation or order provide for the employment of handicapped clients in work activities centers under special certificates at wages which are less than the minimums applicable under section 6 of this Act or prescribed by paragraph (1) of this subsection and which constitute equitable compensation for such clients in work activities centers.

(B) For purposes of this section, the term "work activities centers" shall mean centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential.

(d) The Secretary may by regulation or order provide that sections 6 and 7 shall not apply with respect to the employment by any elementary or secondary school of its students if such employment constitutes, as determined under regulations prescribed by the Secretary, an integral part of the regular education program provided by such school.

PROHIBITED ACTS

SEC. 15. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person—

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or section 7, or in violation of any regulation or order of the Secretary of Labor issued under section 14; except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of the Act, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful;

(2) to violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order of the Secretary issued under section 14;

(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee;

(4) to violate any of the provisions of section 12;

(5) to violate any of the provisions of section 11(c) or any regulation or order made or continued in effect under the provisions of section 11(d), or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

(b) For the purposes of subsection (a) (1) proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.

PENALTIES

SEC. 16. (a) Any person who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 17 in which restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 6 or section 7 of this Act by an employer liable therefor under the provisions of this subsection.

(c) The Secretary of Labor is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 6 or section 7 of this Act, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. When a written request is filed by any employee with the Secretary claiming unpaid minimum wages or unpaid overtime compensation under section 6 or section 7 of this Act, the Secretary may bring an action in any court of competent jurisdiction to recover the amount of such claim: *Provided*, That this authority to sue shall not be used by the Secretary in any case involving an issue of law which has not been settled finally by the courts, and in any such case no court shall have jurisdiction over such action or proceeding initiated or brought by the Secretary if it does involve any issue of law not so finally settled. The consent of any employee to the bringing of any such action by the Secretary, unless such action is dismissed without prejudice on motion of the Secretary, shall constitute a waiver by such employee of any right of action he may have under subsection (b) of this section for such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. Any sums thus recovered by the Secretary on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary under this subsection for the purposes of the statutes of limitations provided in section 6(a) of the

Portal-to-Portal Act of 1947, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.

(d) In any action or proceeding commenced prior to, on, or after the date of enactment of this subsection, no employer shall be subject to any liability or punishment under this Act or the Portal-to-Portal Act of 1947 on account of his failure to comply with any provision or provisions of such Acts (1) with respect to work heretofore or hereafter performed in a workplace to which the exemption in section 13 (f) is applicable, (2) with respect to work performed in Guam, the Canal Zone, or Wake Island before the effective date of this amendment of subsection (d), or (3) with respect to work performed in a possession named in section 6(a)(3) at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.

INJUNCTION PROCEEDINGS

SEC. 17. The district courts, together with the United States District Court for the District of the Canal Zone, the District Court of the Virgin Islands, and the District Court of Guam shall have jurisdiction, for cause shown, to restrain violations of section 15, including in the case of violations of section 15(a)(2) the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this Act (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the provisions of section 6 of the Portal-to-Portal Act of 1947).

RELATION TO OTHER LAWS

SEC. 18. (a) No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this Act or a maximum workweek lower than the maximum workweek established under this Act, and no provision of this Act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this Act. No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act.

[(b) Notwithstanding any other provision of this Act (other than section 13(f)) or any other law—

[(1) any Federal employee in the Canal Zone engaged in employment of the kind described in section 5102(c)(7) of title 5, United States Code, or

[(2) any employee employed in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,

shall have his basic compensation fixed or adjusted at a wage rate

that is not less than the appropriate wage rate provided for in section 6(a)(1) of this Act (except that the wage rate provided for in section 6(b) shall apply to any employee who performed services during the workweek in a work place within the Canal Zone), and shall have his overtime compensation set at an hourly rate not less than the overtime rate provided for in section 7(a)(1) of this Act.]

(b) Notwithstanding any other provision of this Act (other than section 13(f)) or any other law, any employee employed in a Federal nonappropriated fund instrumentality shall have his basic pay fixed or adjusted at an hourly wage rate which is not less than the rate in effect under section 6(a)(1) and shall have his overtime pay fixed or adjusted at an hourly wage rate which is not less than the rate prescribed by section 7(a).

SEPARABILITY OF PROVISIONS

SEC. 19. If any provision of this Act or the application of such provision to any person or circumstances is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

MINORITY VIEWS ON H.R. 7935

By these views, we do not seek to oppose those objectives contained in H.R. 7935 which reflect concern with the problems of marginal employees.

However, we cannot agree that all the provisions of this bill are appropriately directed to the causes of these problems, or avoid the creation of others to which we would later be compelled to direct tax revenues and the atention of our legislative efforts. These provisions which are most counterproductive relate to:

1. the timing of the increases in the minimum wage
2. the phasing out of overtime exemptions in selected sectors of employment and the extension of coverage for certain groups of employees
3. the failure to consider workable methods to improve employment opportunities for youth.

A Responsible Solution

While we cannot support H.R. 7935, we recognize that inflation has eroded the value of the dollar, thus reducing considerably the purchasing power of the current minimum wage rates as established by amendments enacted in 1966. Therefore, we support an increase in the minimum wage—but at a more acceptable rate of increase—a continuation of present exemptions and an improved youth differential.

To correct the deficiencies in both H.R. 7935 and existing law, we believe H.R. 2831 should be adopted as a substitute to the Committee bill.

H.R. 2831 is a bi-partisan bill introduced by Reps. Erlenborn, Fuqua, Quie, Waggonner and John B. Anderson. It proposes the following reasonably paced increases in minimum hourly wage rates:

Type of employee	Hourly rate	Effective date
Nonagricultural employees covered under the minimum wage provisions of the Fair Labor Standards Act prior to the effective date of the 1966 amendments.	$1.80	30 to 60 days.[1]
	2.00	After 1 year (1974).
	2.10	After 2 years (1975).
Nonagricultural employees covered under the minimum wage provisions of the FLSA by the 1966 amendments.	1.70	30 to 60 days.[1]
	1.80	After 1 year (1974).
	2.00	After 2 years (1975).
	2.10	After 3 years (1976).
Agricultural employees covered under the minimum wage provisions of the FLSA.	1.50	30 to 60 days.[1]
	1.70	After 1 year (1974).
	1.80	After 2 years (1975).

[1] The 1st day of the 2d full month after enactment. E.g., if enacted in June, the effective date would be Aug. 1, 1973.

The substitute bill does not extend coverage to any new groups of workers, and it does not phase out or eliminate any of the existing overtime exemptions.

Most importantly, the substitute attempts to remedy the disproportionate and unacceptable unemployment rates which exist for young people and which would be aggravated by increasing the present minimum hourly rates. The youth differential provided in H.R. 2831 permits employment at an hourly rate of 80 percent of the applicable minimum wage or $1.60 ($1.30 in farm work), whichever is higher, for:

Full-time students and

16- and 17-year olds who are not full-time students for the first six months on a job.

Unlike both the Committee bill and existing law, the youth differential would apply in all employment sectors and does not require precertification by the Secretary of Labor. The Secretary, however, would have to take steps to assure that such employment will not displace full-time employment opportunities for others.

The following is an elaboration of our position:

I. TIMING OF INCREASES IN MINIMUM WAGE

Essentially, we cannot support the rapid acceleration of the minimum wage rates provided in the Committee bill.

First, the Committee bill would increase the minimum wage for nonagricultural employees from $1.60 to $2.00 per hour on enactment and to $2.20 per hour one year later. For this group of employees this would represent a 25 percent increase on enactment and 12.5 percent twelve months later for a total increase of 37.5 percent in one year.

Similarly for covered agricultural employees the bill would increase the minimum wage from $1.30 to $1.60 which represents a 23 percent increase in the first year and an average increase of 15.4 percent annually as the wage rate for these employees advances 20 cents per year through 1976. This would represent an increase of 90 cents per hour for covered agricultural employees, or 69.2 percent.

When the House last year considered another bill, H.R. 7130, to increase the minimum wage, it insisted by a vote of 216 to 187 that any increases in the minimum wage rate must be at a more gradual pace than that contained in H.R. 7130. The House then adopted the amended substitute in preference to last year's Committee bill by a vote of 217 to 191. That bill did not become law. Our concern then and now is that the timing of the increases must take heed of our legislative efforts in other areas, including the maintenance of a high rate of employment and control of inflation.

Currently under Phase III the Cost of Living Council, with our recent approval, is engaged in a serious effort to slow the rate of inflation. Consistent with its authority the Council has established a guideline of 5.5 percent annually for wage increases. It seems to us to be counterproductive to legislate increases ranging from 12½ to 25 percent immediately and up to 37.5 percent in one year while instructing the Cost of Living Council to pursue the foregoing guidelines in sectors of employment not directly affected by this bill.

In the same vein, it is apparent that the additional cost represented by the increases in the minimum wage will be passed on to the consumer. For example, according to the Department of Labor, 567,000

workers in the retail industry are currently paid the $1.60 per hour Federal minimum. An increase of 20 cents per hour would cost $423 million annually, an increase to $2.00 per hour would cost $850 million annually and an increase to $2.20 per hour would cost $1.274 billion annually. These costs in an industry marked by a large number of marginal businesses would be passed on to the consumer.

Also related to consumerism is the trade deficit of the United States which was $2.1 billion in 1971 and tripled to $6.4 billion in 1972. While the pace of the increase in that deficit has slowed according to early 1973 figures, failure to heed these warning signs could adversely affect our aparent early success in this area. We recognize that there are a number of factors which combine to increase these deficits. However, it is generally agreed that the higher labor rates in the United States are a major reason for this wholly unsatisfactory result. Excessive or inflationary increases in labor costs by virtue of a too rapid increase in the minimum wage would again combine to increase the attractiveness of imported products to consumers. Such products would include labor saving devices or appliances designed to replace the marginal employee in service industries.

Needless to say, our balance of trade has a direct impact on our balance of payments deficit, which only last week was reported to be $10.2 billion.

To add to the burden of the consumer the bill, as already noted, would provide for an aggregate increase of 69.2 percent for covered agricultural employees. This is proposed at a time when food prices are escalating at an alarming rate.

Phase III controls and our efforts in another area of legislation—health care—would be substantially negated by increasing minimum wage rates too rapidly.

While costs attributable to labor in manufacturing represent approximately 33 percent of all costs, for health care institutions labor represents 60 percent of all costs. This is in an industry where the cost per day of patient care was $44.48 prior to 1966 and had more than doubled to $92.31 per day in 1971. In that same period, the average ratio of employees to each patient increases from 2.46 to 3.01.

The hardship effect of this is apparent under Public Law 92–603 which prohibits Medicare and Medicaid payments to nursing homes in excess of 105 percent of the cost of such services in the previous year.

Finally as regards the increase in the minimum wage, it should be noted that under the Committee bill the increases in rates would apply to the Canal Zone.

We are all aware of the problems attendant upon our continued presence in the Zone. Negotiations with the Republic of Panama for the transfer of government operated commercial activities to enterprises under Panamanian jurisdiction are in progress. An ultimate goal of the United States is to integrate the Zone with Panama economically without jeopardy to United States control and defense of the Zone.

Both the Department of State and the Governor of the Zone have asked that, in light of the foregoing, Congress exclude the Zone from the wage increases. Specifically, it was pointed out that accentuation

of the wage spread between Panamanians employed in the Zone and those in the Republic (currently at a minimum wage of $0.50–$0.75) would complicate the treaty negotiations to obtain salary protection of some 2,500 high wage employees to be affected by the transfer of operations. Further, the increase in costs to the Zone ($6,000,000 annually) could lead to an increase in tolls, work force reductions, or reductions in services or a combination thereof. Any of the foregoing would produce significant labor relations and political problems with the Republic, as well as international repercussions. For these reasons, the House last year adopted an amendment to retain the present minimum wage rates in the Canal Zone.

II. THE ADMIXTURE OF COVERAGE EXTENSION

Various provisions of the Committee bill relate to extension of coverage by the minimum wage or overtime provisions or both to selected sectors of employment.

We do not disagree that each review of the Fair Labor Standards Act should be accompanied by a review of the reasons for continuing exemptions and not covering certain sectors of employment. Nevertheless, we should avoid hurried change not supported by empirical evidence.

Section 201.--Extension of Minimum Wage and Overtime Coverage to Federal, State and Local Government Employees

Imposing minimum wage rates and overtime on State governments in our view represents an unjustified intrusion upon areas of State sovereignty. Moreover, we find it inconsistent to provide revenue sharing to States and local governments on the one hand and to take it back with the other.

The Committee bill specifically exempts firemen and policemen from overtime coverage--presumably because of the special conditions that apply to their employment and the essential nature of the service performed. However, all services provided by our respective units of government are essential. Accordingly, without sufficient information regarding the impact of overtime coverage on the fixed budgets of the government units, action by us to force them to consider reductions in services or employment because of unexpected overtime requirements in cases of emergency is unwarranted. No reasons have been advanced to explain why we should deny to the States and local governments the right to continue the traditional practice of granting compensating time off, rather than paying overtime.

Section 204.--Elimination of Overtime Exemption for Seasonal and Agricultural Processing Employees

It appears discriminatory to remove the overtime exemption in this category while continuing the same exemption for the sugar, tobacco, and cotton agriculture sectors. Certainly the evidence the majority found to warrant the continuance of overtime exemptions in sugar, tobacco and cotton industries must apply equally to seasonal and agricultural processing employees.

It may be appropriate at some date to review the necessity of this exemption and the effects of its removal in all sectors of agriculture.

However, concerned as we are with erosion of the consumer's food budget dollar, action which would obviously tend to further erode that purchasing power would be most unwise.

Section 205.—Domestic Service Employees

This section of H.R. 7935 would extend coverage to people employed in private residences—whether they work a few hours a week as baby sitters, one day a week to help with the cleaning or a regular 40-hour week—but it excludes those who live-in.

Our first concern is that bringing domestic workers under the FLSA will price some of them out of the job market. We believe these people—most of whom are unskilled—if given a choice would rather work at less than the minimum wage than not find work at $2.00 an hour.

A recent study conducted by the Department of Labor indicated that a minimum wage of $1.60 an hour for domestics in 1971 would have reduced jobs by 40%, and an increase to $1.80 would have reduced jobs by 55%. No evidence was presented during hearings to suggest that the situation would be different in 1973. We can also predict from the results of this study that the $2.00 or $2.20 rates in the Committee bill would have an even greater impact.

Apart from this dire prediction, we must bear in mind that the philosophy behind the minimum wage law includes the recognition that covering small businesses would inhibit enforcement. Small employers have historically been excluded because the added burden of policing their compliance would be disproportionate to any measurable result.

During hearings, we were told that some 3 million people are currently employed in private homes. Because most of these work single days or part of days in each week for different employers, the number of newly affected employers from this provision alone could be anywhere from 6 million to 15 million. The added budgetary and manpower burden for enforcement would be staggering.

Each of these newly affected employers—regardless of the fact that the vast majority would be casual employers, those who pay others to work in their homes less than 15 hours a week—would have to keep records of hours worked on a regular basis, overtime, and salaries paid. Do we really want to subject housewives to possible criminal penalties for failure to keep these records accurately? Can we expect enforcement?

Section 301.—Conforming Amendments

Two provisions of the Committee bill are described as "Conforming Amendments." Actually, the first would treat one category of employers—certain Federal contractors—who were not covered by the FLSA until 1966 as though they had been covered prior to the 1966 amendments. In other words, under H.R. 7935, the minimum rates for this group would move immediately from $1.60 to $2.00, rather than from $1.60 to $1.80, and so on. We view this as something more than a "conforming amendment," and we object.

The description as a conforming amendment discouraged testimony concerning the possible rationale behind this change in the law. Our understanding is that it applies to firms whose business with the

Federal Government is most often nominal, and no justification has been offered for escalating minimum rates for this group at a faster rate than for others covered by the 1966 amendments.

III. THE EMPLOYMENT PROBLEM OF YOUTH

We remain vitally concerned with the probable adverse effect of the application of the increase in the minimum wage to jobs now and normally occupied by young people.

While we have in recent years passed legislation pertaining to the training and development of these citizens for employment, we must admit that manpower training legislation will never be adequate to cope with the entire problem of preparing our youth for entry into the labor market. As Labor Secretary Brennan pointed out, 627,000 youths between the ages of 16 and 18 are unemployed, representing an unemployment figure of 17.2% as compared with 4% for workers over the age of 20. And according to a recent article by Sar A. Levitan and Robert Taggart "The Economics of Youth Unemployment in the United States", ". . . there is no doubt that measured unemployment rates seriously understate the problems of youth".

Although we do not completely dismiss the contribution of the current provision in the Fair Labor Standards Act pertaining to student employment certificates, its effect has been minimal. Approximately 16 million young people are enrolled as high school juniors and seniors or as college students. Of that number only 37,000 full-time students are currently employed pursuant to that employment procedure. In that connection the Levitan-Taggart article points out that the intended effect of this provision, i.e. to encourage employment of teenagers is not achieved because "few employers want to get involved in the red tape of hiring these younger teenagers . . . legal restrictions are reviewed by employers as the single most important reason for not hiring 16 and 17 year old".

We view the establishment of an artificial wage floor for these employees without regard to their productivity as compared with older and more experienced participants in our job force as being a further and more serious deterrent to solving the unemployment problem of our nation's youth. Even the more conservative opinions in this area conclude that amendments to the Fair Labor Standards Act including extensions of coverage and increases in the minimum wage "tentatively suggest" that these amendments have an adverse effect on teenage employment (see study by Federal Reserve Board Governor Andrew F. Brimmer, *Congressional Record*, 4/12/73, p H-2714).

The student certificate procedure of course, is of no value to the 22% of our young people who drop out of high school.

Importantly, the American Association of Presidents of Independent Colleges and Universities has stated that an increase in the minimum wage to $2 per hour will result in the curtailment of employment of student youths in every category of college operations. This is so, they indicate, because an increase in the minimum wage if applied to their student employees would cost each of their members anywhere from $53,000 to $2.5 million; and they simply do not have these additional funds.

In support of this position Dr. Yale Brozen, Professor of Economics, University of Chicago and a director in the program of applied economics, pointed out that one of the arguments made for an increase in the minimum wage is totally inapplicable to students. The argument that the present minimum wages does not provide sufficient income in full time work to rise above the poverty line of $3,968 has nothing to do with the situation of the student, or for that matter the 16- and 17-year old nonstudent. This poverty line is established for a family of four in urban circumstances. Most, if not all, students do not support families of four nor are nearly all of them attending colleges in high cost metropolitan areas. The current minimum wage provides an income above the poverty line for a single person even in urban areas.

In reviewing these matters with our colleagues, we are somewhat dismayed by their apparent unwillingness to consider some reasonable or realistic approach to the solution of the youth unemployment problem and the aggravation of that problem threatened by the increase in the minimum wage. The Committee does not deny the existence of the problem, but they have never offered a solution. Their reaction is simply to refuse to consider any youth differential. We must recognize the fact that in our most recent effort to enact minimum wage legislation this body voted 227 to 170 for a meaningful youth differential in the minimum wage.

In summary, the consequences of inflation need to be reflected in the way minimum wage rates for marginal employees are increased. At the same time, however, we must not undo the many efforts being made to control inflation which hurts all of us, including the people intended to be helped by minimum wage rates; and we must encourage employment opportunities for our young people. We will, therefore, support H.R. 2831 as a substitute to the counterproductive measure approved by the Committee.

ALBERT H. QUIE.
JOHN N. ERLENBORN.
JOHN DELLENBACK.
MARVIN L. ESCH.
EDWIN D. ESHLEMAN.
WILLIAM A. STEIGER.
JACK F. KEMP.
DAVID TOWELL.
RONALD A. SARASIN.
ROBERT J. HUBER.

SUPPORTING VIEWS OF MR. O'HARA

In the first session of the 92nd Congress, this Committee reported to the House a bill, H.R. 7130, which like H.R. 7935, would have improved wages and working conditions for thousands of American workers.

I supported H.R. 7130, as I support H.R. 7935, as a "significant step forward for most of the working men and women of this nation."

When we reported H.R. 7130 to the House, I felt obliged to file separate views, emphasizing my support for the bill, but expressing deep concern that the bill, as reported, left intact the indefensible proposition that there must always be some gap between the farm worker's minimum wage and everyone else's.

This time, in all fairness to my colleagues on the Committee, I feel I should file separate views to express my satisfaction over the fact that this bill, finally, after years of waiting and hoping and working and losing, puts a statutory end to the differential. For the first time, if H.R. 7935 is passed, the Congress will have decided that agricultural workers are first-class citizens of the world of work—workers who will, after a specified and finite period, be entitled by law to the same minimum wage protection as are their fellow workers.

This is a small and hesitant step toward equality for the farm worker. But the fact that it has been taken once and for all puts an end to the myth that there are objective reasons for continuing to treat farm workers differently than other workers.

The section I am discussing is not a major change in terms of the number of workers covered. All too many farm workers are still left outside the protections of this Act altogether. It is not a massive change in terms of the amounts of money involved. The four-year stretch-out of the provisions means its impact upon employers will be minimal. But its importance in terms of simple justice is beyond measure. And, as one who has for long years decried the unwillingness of the Congress to treat farm workers as though they were free men, I feel I must express my jubilation over the amendment, and my profound congratulations to the Chairman and members of the Subcommittee for having offered the amendment in Committee.

JAMES G. O'HARA.

SEPARATE MINORITY VIEWS OF REPRESENTATIVE LANDGREBE ON H.R. 7935

H.R. 7935 is, as are all minimum wage laws, an attack on producers (workers and employers alike) and consumers.

Wages, like prices, are determined by the law of supply and demand. Economic laws, although they involve human action, are as immutable as any other natural laws; they cannot be changed by arbitrary decree. Attempts to raise wages by government edict can only result in unemployment, the closing of businesses, and higher prices; thus harming the wage-earner far more than helping him.

1. UNEMPLOYMENT

H.R. 7935 will, by further increasing the minimum wage, cause a further increase in unemployment. The arbitrary increase in wages will result in an increase in the cost of production for many businesses, and this in turn will increase the price of their products, resulting in less sales, necessitating a cutback in production and thus a layoff of employees.

Those affected are the "marginal" employees—non-skilled workers whose wages are near or below the government decreed minimum. Hardest hit among the marginal employees are the young people of our Nation. Having dropped out of school or having just graduated from high school, a young person is in desperate need of employment. He (or she) is at a crucial point in his life—he has no skill and is unsure of his ability. A job, no matter what the wage, allows him to gain the self-confidence and skill he needs to proceed on to better employment and a better life. In a free country, there is no limit to how high he may climb.

The government, however, in its great compassion for young men and women standing on the threshold of adulthood, passes laws such as H.R. 7935, sentencing a great number of them to permanent poverty.

That H.R. 7935 will cause great numbers of persons to become unemployed is even admitted by its proponents. They attempted, for example, to add a provision granting income tax credits to persons employing domestic workers. They were aware that without this provision, H.R. 7935 would, by bringing domestic workers under the Fair Labor Standards Act for the first time, throw thousands out of work.

2. CLOSING OF BUSINESSES

Another effect of H.R. 7935 will be to cause many businesses that depend on marginal and unskilled labor to close down. This not only causes further unemployment, but it curtails expansion and investment that would have provided more jobs at higher wages in the future.

For example, I know of one manufacturer in Indiana that presently has two sets of plans for expansion: one calls for expansion by building

more plants and providing more jobs in the United States; the other calls for building the plants in Mexico. The management is holding up implementation of the plans pending the outcome of this minimum wage bill—if H.R. 7935 becomes law, they will build in Mexico; if H.R. 7935 is defeated, they will build in the United States. They are not doing this to gain vengeance against unjust laws; they are doing it out of economic necessity.

How many other businesses will close down or curtail expansion as a result of this bill? It is, of course, impossible to compute. We can rest assured, however, that the same type of people who promote minimum wage laws will soon be complaining louder and louder that the free enterprise system (which *they* have shackled) has failed to provide a solution to the unemployment problem (which *they* have created).

3. HIGHER PRICES

While H.R. 7935 will hit some immediately and directly by throwing them out of work, it will affect everyone eventually by causing a general rise in the price of those goods and services that remain on the market.

Since some businesses will close down as a result of H.R. 7935, there will be less products available to the consumer than there otherwise would have been. Those products still on the market will have their price bid up since there is relatively a lesser quantity available.

But this is just one factor that will cause prices to rise. The arbitrary increase in the cost of labor will be passed on to the consumer, as will the increase in unemployment compensation paid by employers as a result of being forced to layoff many of their marginal employees.

Then, of course, there will be the increase in taxes (and/or inflation, if the government chooses deficit spending instead of increased taxation) to pay for the increase in welfare payments to the newly unemployed. Thus not only will prices rise, but wage-earners will have less to spend.

4. WHO BENEFITS

But surely, one might ask, someone must benefit from such a law? There are two groups of potential beneficiaries.

One would be a group of workers that is receiving a wage actually below its market worth. This is likely to happen only in special circumstances or localities where competitive forces do not operate freely. However, in such a case, the situation is easily remedied by unionization and the threat to strike. Since the wages are below market worth, the employer could not entice other workers to replace those he would lose, and thus he would be forced to grant higher wages.

The only other potential beneficiaries would be those workers earning a wage near or below the present minimum wage, who would retain employment at the new minimum. They would then be receiving a wage above what they could earn on the free market. Their benefit would, however, most probably be short-term. For they too would soon be paying the higher prices and taxes.

And their gain is nothing when considered in the context of the losses incurred by others. In fact, the greatest irony of minimum wage laws is the fact that it is the vast majority of *wage-earners* who suffer

from them. The number of marginal employees who may gain from these laws is quite small in comparison to the number who earn far above the minimum and thus have no possibility of benefiting from them. For they cannot escape their effects: the wage-earners must pay the higher prices and taxes that result. Thus if H.R. 7935 becomes law, the vast majority of wage earners in this country will have the real earning power of their wages arbitrarily reduced.

(There is, of course, one other group that stands to gain from this law: the politicians eager to court the vote of union members who have been greatly misled on this issue. I suppose, however, that it is considered bad form to mention this).

5. THE QUESTION OF RIGHTS

There is also the whole issue of the government's right to control the lives and actions of United States citizens when they are merely minding their own business, harming no one. Do U.S. citizens no longer have the right to choose the terms of their *own* employment? If a person wants to work at a wage that happens to be less than that arbitrarily set by politicians, does the government have the right to prohibit him from working? In a free country the government is supposed to protect its citizen's rights, not violate them; but then, maybe the goal of legislation such as H.R. 7935 is to destroy what freedom still remains in America.

6. HOW TO REALLY RAISE WAGES

All of the foregoing does not mean that there is no way to raise wages; only that it cannot be done by government fiat. As Henry Hazlitt has observed:

> The best way to raise wages, therefore, is to raise labor productivity. This can be done by many methods: by an increase in capital accumulation—i.e., by an increase in the machines with which the workers are aided; by new inventions and improvements; by more efficient management on the part of employers; by more industriousness and efficiency on the part of workers; by better education and training. The more the individual worker produces, the more he increases the wealth of the whole community. The more he produces, the more his services are worth to consumers, and hence to employers. And the more he is worth to employers, the more he will be paid. Real wages come out of production, not out of government decrees. (*Economics in One Lesson*, Harper & Row, 1946, p. 142.)

The history of the United States, where workers enjoy higher wages and a higher standard of living than in any other country at any other time, is more than ample evidence to support Mr. Hazlitt's observation.

The high wages were made possible only as a result of the economic freedom that is a precondition to the new inventions, discoveries and ideas that make capital accumulation—and thus the greater productivity of each worker—possible.

Therefore, those who are truly concerned with raising wages will advocate greater economic freedom, not laws such as H.R. 7935 which help to eliminate it.

INDIVIDUAL VIEWS OF REPRESENTATIVE MAZZOLI

Generally, I am in favor of H.R. 7935 which increases minimum wage standards and extends overtime hour provisions of the Fair Labor Standards Act. In view of the eroded purchasing power of the dollar due to inflation, an increase in the minimum wage standard particularly appears to be long overdue.

However, I am compelled to express reservations about certain aspects of this bill which I believe detract from its overall good intent and salutary purpose.

Some of my colleagues have raised serious questions about the schedule of the incremental minimum wage increases contained in H.R. 7935. Some feel the increases are too precipitous and thus contribute further to the inflationary spiral.

On balance, however, the needs of our marginal and lower-paid employees have priority here. Thus, I support the proposed schedule of increases though not without some uncertainty as to the inflationary impact.

Also, I am less than enthusiastic about phasing out certain overtime exemptions for workers who already enjoy wages substantially above the minimum. In this respect the bill loses sight of its fundamental objective which is to better the standard of living of the working poor.

By contrast, in certain food-processing activities, H.R. 7935 waives overtime protection for affected workers—most of whom are low-paid. Here, overtime exemptions should not have been maintained.

Another area in which I disagree with the committee bill is in its failure to foster employment opportunities for full-time students and certain other young people through a carefully regulated youth differential provision.

Such a provision should include safeguards to prevent inducing youngsters to leave school prematurely and to prevent excessive displacement of adult workers.

A differential is feasible here since most young people seeking employment are not supporting a household. We must also consider the effect that a minimum wage increase without a reasonable youth differential will have on the overhead expenses of the nation's colleges and universities, which heavily depend upon part-time student help.

Also, I do not believe it is appropriate to include governmental employees under the coverage for minimum wage and overtime provided in H.R. 7935. This can place an insuperable financial burden on state and local government, and intrudes unnecessarily in the daily operations of these other governmental units.

My final reservation involves the exemption from coverage under H. R. 7935 of employees of conglomerates with gross annual sales of $10,000,000 or less. I think that in extending minimum wage and overtime protection to employees of conglomerates, we should do so without exemptions.

ROMANO L. MAZZOLI,
Member of Congress.

24 September 1973

MEMORANDUM FOR THE FILE

SUBJECT: H.R. 7935

The President vetoed the bill and the vote in the House on September 19 to override the veto failed passage.

PLC

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150002-2

☐ UNCLASSIFIED ☐ INTERNAL USE ONLY SECRET

ROUTING AND RECORD SHEET

SUBJECT: (Optional)
Fair Labor Standards Act Amendments

FROM:	EXTENSION	NO.
Legislative Counsel	6136	
		DATE 30 July 1973

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. [redacted]				For your review, per our telecon. Attached is an extract from the Congressional Record setting out the Conference Report on H. R. 7935, amendments to the Fair Labor Standards Act. The Conference Committee agreed to the following: a. Coverage of minimum wage and overtime was extended to Federal employees. b. The CSC will administer the Act for Federal employees. c. The Senate amendment to extend the Age Discrimination in Employment Act of 1967 to include Federal employees was dropped. I called Lorraine Pendrys, Salary Policy Division, CSC, and discussed the impact of the bill. She feels the Conference Report should pass with little change. There is still a possibility of veto. She could not determine at this time how the Agency would be affected. She noted, however, the CSC must review all positions within the Federal Government to determine coverage and exemptions and existing CSC regulations will be followed wherever possible. [redacted] Assistant Legislative Counsel att. STATINTL
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FORM 3-62 610 USE PREVIOUS EDITIONS ☐ SECRET ☐ CONFIDENTIAL ☐ INTERNAL USE ONLY ☐ UNCLASSIFIED

CONFERENCE REPORT ON H.R. 7935

Pursuant to an order of the House on Thursday, July 26, 1973, the conference report on the bill (H.R. 7935) to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rates under that act, to expand the coverage of that act, and for other purposes, is herewith printed, as follows:

[Submitted by Mr. PERKINS]

CONFERENCE REPORT (H. REPT. No. 93-413)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 7935) to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rates under that Act, to expand the coverage of that Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SHORT TITLE; REFERENCES TO ACT

SECTION 1. (a) This Act may be cited as the "Fair Labor Standards Amendments of 1973".

(b) Unless otherwise specified, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the section or other provision amended or repealed is a section or other provision of the Fair Labor Standards Act of 1938 (29 U.S.C. 201-219).

INCREASE IN MINIMUM WAGE RATE FOR EMPLOYEES COVERED BEFORE 1966

SEC. 2. Section 6(a)(1) is amended to read as follows:

"(1) not less than $2 an hour during the period ending June 30, 1974, and not less than $2.20 an hour after June 30, 1974, except as otherwise provided in this section;".

INCREASE IN MINIMUM WAGE RATE FOR NONAGRICULTURAL EMPLOYEES COVERED IN 1966 AND 1973

SEC. 3. Section 6(b) is amended (1) by inserting ", title IX of the Education Amendments of 1972, or the Fair Labor Standards Amendments of 1973" after "1966", and (2) by striking out paragraphs (1) through (5) and inserting in lieu thereof the following:

"(1) not less than $1.80 an hour during the period ending June 30, 1974,

"(2) not less than $2 an hour during the year beginning July 1, 1974, and

"(3) not less than $2.20 an hour after June 30, 1975."

INCREASE IN MINIMUM WAGE RATE FOR AGRICULTURAL EMPLOYEES

SEC. 4. Section 6(a)(5) is amended to read as follows:

"(5) if such employee is employed in agriculture, not less than—

"(A) $1.60 an hour during the period ending June 30, 1974,

"(B) $1.80 an hour during the year beginning July 1, 1974,

"(C) $2 an hour during the year beginning July 1, 1975, and

"(D) $2.20 an hour after June 30, 1976."

INCREASE IN MINIMUM WAGE RATES FOR EMPLOYEES IN PUERTO RICO AND THE VIRGIN ISLANDS

SEC. 5. (a) Section 5 is amended by adding at the end thereof the following new subsection:

"(e) Appeals made of this section, section 6(c), and section 8 shall not apply with respect to the minimum wage rate of any employee employed in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands, (2) by an establishment which is a hotel, motel, or restaurant, or (3) by any other retail or service establishment which employs such employee primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs. The minimum wage rate of such an employee shall be determined under this Act in the same manner as the minimum wage rate for employees employed in a State of the United States as determined under this Act. As used in the preceding sentence, the term 'State' does not include a territory or possession of the United States."

(b) Effective on the date of the enactment of the Fair Labor Standards Amendments of 1973, subsection (c) of section 6 is amended by striking out paragraphs (2), (3), and (4) and inserting in lieu thereof the following:

"(2) Except as provided in paragraphs (4) and (5), in the case of any employee who is covered by such a wage order on the date of enactment of the Fair Labor Standards Amendments of 1973 and to whom the rate or rates prescribed by subsection (a) or (b) would otherwise apply, the wage rate applicable to such employee shall be increased as follows:

"(A) Effective on the effective date of the Fair Labor Standards Amendments of 1973, the wage order rate applicable to such employee on the day before such date shall—

"(i) if such rate is under $1.40 an hour, be increased by $0.12 an hour, and

"(ii) if such rate is $1.40 or more an hour, be increased by $0.15 an hour,

except that, in the case of an employee whose wage order rate was increased (pursuant to the recommendations of a special industry committee convened under section 8) during the period beginning on July 26, 1973, and ending before the effective date of the Fair Labor Standards Amendments of 1973, the wage order rate applicable to such employee shall be increased only if the amount of the increase during such period was less than the otherwise applicable increase prescribed by clause (i) or (ii) of this subparagraph and only to the extent of the difference between the increase during such period and such otherwise applicable increase.

"(B) Effective on the first day of the second and each subsequent year after such date, the highest wage order rate applicable to such employees on the day before such first day shall—

"(i) if such rate is under $1.40 an hour, be increased by $0.12 an hour, and

"(ii) if such rate is $1.40 or more an hour, be increased by $0.15 an hour.

In the case of any employee employed in agriculture who is covered by a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 5, to whom the rate or rates prescribed by subsection (a)(5) would otherwise apply, and whose hourly wage is increased above the wage rate prescribed by such wage order by a subsidy (or income supplement) paid, in whole or in part, by the government of Puerto Rico, the increases prescribed by this paragraph, shall be applied to the sum of the wage rate in effect under such wage order and the amount by which the employee's hourly wage rate is increased by the subsidy (or income supplement) above the wage rate in effect under such wage order.

"(3) In the case of any employee employed in Puerto Rico or the Virgin Islands to whom this section is made applicable by the amendments made to this Act by the Fair Labor Standards Amendments of 1973, the Secretary shall, as soon as practicable after the date of enactment of the Fair Labor Standards Amendments of 1973, appoint a special industry committee in accordance with section 5 to recommend the highest minimum wage rate or rates, which shall be not less than 60 per centum of the otherwise applicable minimum wage rate in effect under subsection (b) or $1.00 an hour, whichever is greater, to be applicable to such employee in lieu of the rate or rates prescribed by subsection (b). The rate recommended by the special industry committee shall (A) be effective with respect to such employee upon the effective date of the wage order issued pursuant to such recommendation, but not before sixty days after the effective date of the Fair Labor Standards Amendments of 1973, and (B) except in the case of employees of the government of Puerto Rico or any political subdivision thereof, be increased in accordance with paragraph (2)(B).

"(4)(A) Notwithtanding paragraph (2)(A) or (3), the wage rate of any employee in Puerto Rico or the Virgin Islands which is subject to paragraph (2)(A) or (3) of this subsection, shall, on the effective date of the wage increase under paragraph (2)(A) or of the wage rate recommended under paragraph (3), as the case may be, be not less than 60 per centum of the otherwise applicable rate under subsection (a) or (b) or $1.00, whichever is higher.

"(B) Notwithstanding paragraph (2)(B), the wage rate of any employee in Puerto Rico or the Virgin Islands which is subject to paragraph (2)(B), shall, on and after the effective date of the first wage increase under paragraph (2)(B), be not less than 60 per centum of the otherwise applicable rate under subsection (a) or (b) or $1.00, whichever is higher.

"(5) If the wage rate of an employee is to be increased under this subsection to a wage rate which equals or is greater than the wage rate under subsection (a) or (b) which, but for paragraph (1) of this subsection, would be applicable to such employee, this subsection shall be inapplicable to such employee and the applicable rate under such subsection shall apply to such employee.

"(6) Each minimum wage rate prescribed by or under paragraph (2) or (3) shall be in effect unless such minimum wage rate has been superseded by a wage order (issued by the Secretary pursuant to the recommendation of a special industry committee convened under section 8) fixing a higher minimum wage rate."

(c)(1) The last sentence of section 8(b) is amended by striking out the period at the end thereof and inserting in lieu thereof a semicolon and the following: "except that the committee shall recommend to the Secretary the minimum wage rate prescribed in section 6(a) or 6(b), which would be applicable but for section 6(c), unless there is substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years or in the case of employees of public agencies other appropriate information, in the record which establishes that the industry, or a predominant portion thereof is unable to pay that wage."

(2) The third sentence of section 10(a) is amended by inserting after "modify" the following: "(including provision for the payment of an appropriate minimum wage rate)".

(d) Section 8 is amended (1) by striking out "the minimum wage prescribed in paragraph (1) of section 6(a) in each such industry" in the first sentence of subsection (a) and inserting in lieu thereof "the minimum wage rate which would apply in each such industry under paragraph (1) or (5) of section 6(a)", and (2) by striking out "the minimum wage rate prescribed in paragraph (1) of section 6(a)" in the last

sentence of subsection (a) and inserting in lieu thereof "the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) of section 6(a)", and (3) by striking out "prescribed in paragraph (1) of section 6(a)" in subsection (c) and inserting in lieu thereof "in effect under paragraph (1) or (5) of section 6(a) (as the case may be)".

FEDERAL AND STATE EMPLOYEES

SEC. 6. (a)(1) Section 3(d) is amended to read as follows:

"(d) 'Employer' includes any person acting directly and indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization."

(2) Section 3(e) is amended to read as follows:

"(e)(1) Except as provided in paragraphs (2) and (3), the term 'employee' means any individual employed by an employer.

"(2) In the case of an individual employed by a public agency, such term means—

"(A) any individual employed by the Government of the United States—

"(i) as a civilian in the military departments (as defined in section 102 of title 5, United States Code),

"(ii) in any executive agency (as defined in section 105 of such title),

"(iii) in any unit of the legislative or judicial branch of the Government which has positions in the competitive service,

"(iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, or

"(v) in the Library of Congress;

"(B) any individual employed by the United States Postal Service or the Postal Rate Commission; and

"(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

"(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and

"(ii) who—

"(I) holds a public elective office of that State, political subdivision, or agency,

"(II) is selected by the holder of such an office to be a member of his personal staff,

"(III) is appointed by such an office holder to serve on a policy making level, or

"(IV) who is an immediate advisor to such an office holder with respect to the constitutional or legal powers of his office."

"(3) For purposes of subsection (u), such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family."

(3) Section 3(h) is amended to read as follows:

"(h) 'Industry' means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed."

(4) Section 3(r) is amended by inserting "or" at the end of paragraph (2) and by inserting after that paragraph the following new paragraph:

"(3) in connection with the activities of a public agency,".

(5) Section 3(s) is amended—

(A) by striking out in the matter preceding paragraph (1) "including employees handling, selling, or otherwise working on goods" and inserting in lieu thereof "or employees handling, selling, or otherwise working on goods or materials",

(B) by striking out "or" at the end of paragraph (3),

(C) by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; or",

(D) by adding after paragraph (4) the following new paragraph:

"(5) is an activity of a public agency.", and

(E) by adding after the last sentence the following new sentence: "The employees of an enterprise which is a public agency shall for purposes of this subsection be deemed to be employees engaged in commerce, or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce."

(6) Section 3 is amended by adding after subsection (w) the following:

"(x) 'Public agency' means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Rate Commission), a State, or a political subdivision of a State; or any interstate governmental agency."

(b) Section 4 is amended by adding at the end thereof the following new subsection:

"(f) The Secretary is authorized to enter into an agreement with the Librarian of Congress with respect to any individual employed in the Library of Congress to provide for the carrying out of the Secretary's functions under this Act with respect to such individuals. Notwithstanding any other provision of this Act, or any other law, the Civil Service Commission is authorized to administer the provisions of this Act with respect to any individual employed by the United States (other than an individual employed in the Library of Congress, United States Postal Service, or Postal Rate Commission). Nothing in this subsection shall be construed to affect the right of an employee to bring an action for unpaid minimum wages, or unpaid overtime compensation, and liquidated damages under section 16(b) of this Act.".

(c) Section 7 is amended by adding at the end thereof the following new subsection:

"(k) No public agency shall be deemed to have violated subsection (a) with regard to any employee engaged in fire protection or law enforcement activities (including security personnel in correctional institutions) if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of twenty-eight consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed for his employment in excess of—

"(1) one hundred and ninety-two hours in each such twenty-eight day period during the first year from the effective date of the Fair Labor Standards Amendments of 1973;

"(2) one hundred and eighty-four hours in each such twenty-eight day period during the second year from such date;

"(3) one hundred and seventy-six hours in each such twenty-eight day period during the third year from such date;

"(4) one hundred and sixty-eight hours in each such twenty-eight day period during the fourth year from such date; and

"(5) one hundred and sixty hours in each such twenty-eight day period thereafter."

(d)(1) The second sentence of section 16(b) is amended to read as follows: "Action to recover such liability may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated.".

(2)(A) Section 6 of the Portal-to-Portal Pay Act of 1947 is amended by striking out the period at the end of paragraph (c) and by inserting in lieu thereof a semicolon and by adding after such paragraph the following:

"(d) with respect to any cause of action brought under section 16(b) of the Fair Labor Standards Act of 1938 against a State or a political subdivision of a State in a district court of the United States on or before April 18, 1973, the running of the statutory periods of limitation shall be deemed suspended during the period beginning with the commencement of any such action and ending one hundred and eighty days after the effective date of the Fair Labor Standards Amendments of 1973, except that such suspension shall not be applicable if in such action judgment has been entered for the defendant on the grounds other than State immunity from Federal jurisdiction."

(B) Section 11 of such Act is amended by striking out "(b)" after "section 16".

DOMESTIC SERVICE WORKERS

SEC. 7. (a) Section 2(a) is amended by inserting at the end the following new sentence: "The Congress further finds that the employment of persons in domestic service in households affects commerce."

(b)(1) Section 6 is amended by adding after subsection (e) the following new subsection:

"(f) Any employee who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under section 6(b) unless such employee's compensation for such service would not because of section 209(g) of the Social Security Act constitute 'wages' for purposes of title II of such Act."

(2) Section 7 is amended by adding after the subsection added by section 6(c) of this Act the following new subsection:

"(1) Subsection (a)(1) shall apply with respect to any employee who in any workweek is employed in domestic service in a household unless such employee's compensation for such work would not because of section 209(g) of the Social Security Act constitute 'wages' for purposes of title II of such Act."

(3) Section 13(a) is amended by adding at the end the following new paragraph:

"(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary)."

(4) Section 13(b) is amended by striking out the period at the end of paragraph (19) and inserting in lieu thereof "; or" and by adding after that paragraph the following new paragraph:

"(20) any employee who is employed in domestic service in a household and who resides in such household; or".

RETAIL AND SERVICE ESTABLISHMENTS

SEC. 8. (a) Effective July 1, 1974, section 13(a)(2) (relating to employees of retail and service establishments) is amended by striking out "$250,000" and inserting in lieu thereof "$225,000".

(b) Effective July 1, 1975, such section is amended by striking out "$225,000" and inserting in lieu thereof "$200,000".

(c) Effective July 1, 1976, such section is amended by striking out "or such establishment has an annual dollar volume of sales which is less than $200,000 (exclusive of excise taxes at the retail level which are separately stated)".

TOBACCO EMPLOYEES

SEC. 9. (a) Section 7 is amended by adding after the subsection added by section 7(b)(2) of this Act the following:

"(m) For a period or periods of not more than [illegible] in the aggregate in any calendar year, any employer may employ any employee for a workweek in excess

of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if such employee—

"(1) is employed by such employer—

"(A) to provide services (including stripping and grading) necessary and incidental to the sale at auction of green leaf tobacco of type 11, 12, 13, 14, 21, 22, 23, 24, 31, 35, 36, or 37 (as such types are defined by the Secretary of Agriculture) or in auction sale, buying, handling, stemming, redrying, packing, and storing of such tobacco,

"(B) in auction sale, buying, handling, sorting, grading, packing, or storing green leaf tobacco of type 32 (as such type is defined by the Secretary of Agriculture), or

"(C) in auction sale, buying, handling, stripping, sorting, grading, sizing, packing, or stemming prior to packing, of perishable cigar leaf tobacco of type 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 61, or 62 (as such types are defined by the Secretary of Agriculture); and

"(2) receives for—

"(A) such employment by such employer which is in excess of ten hours in any workday, and

"(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

An employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section."

(b)(1) Section 13(a)(14) is repealed.

(2) Section 13(b) is amended by adding after the paragraph added by section 7(b)(4) of this Act the following new paragraph:

"(21) any agricultural employee employed in the growing and harvesting of shade-grown tobacco who is engaged in the processing (including, but not limited to, drying, curing, fermenting, bulking, rebuilding, sorting, grading, aging, and baling) of such tobacco, prior to the stemming process, for use as cigar wrapped tobacco; or".

TELEGRAPH AGENCY EMPLOYEES

SEC. 10. (a) Section 13(a)(11) (relating to telegraph agency employees) is repealed.

(b)(1) Section 13(b) is amended by adding after the paragraph added by section 9(b)(2) of this Act the following new paragraph:

"(22) any employee or proprietor in a retail or service establishment, which qualifies as an exempt retail or service establishment under paragraph (2) of subsection (a) with respect to whom the provisions of sections 6 and 7 would not otherwise apply, engaged in handling telegraphic messages for the public under an agency or contract arrangement with a telegraph company where the telegraph message revenue of such agency does not exceed $500 a month and receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or".

(2) Effective one year after the effective date of the Fair Labor Standards Amendments of 1973, section 13(b)(22) is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(3) Effective two years after such date, section 13(b)(22) is repealed.

SEAFOOD CANNING AND PROCESSING EMPLOYEES

SEC. 11. (a) Section 13(b)(4) (relating to fish and seafood processing employees) is amended by inserting "who is" after "employee", and by inserting before the semicolon the following: ", and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed".

(b) Effective one year after the effective date of the Fair Labor Standards Amendments of 1973, section 13(b)(4) is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(c) Effective two years after such date, section 13(b)(4) is repealed.

NURSING HOME EMPLOYEES

SEC. 12. (a) Section 13(b)(8) (insofar as it relates to nursing home employees) is amended by striking out "any employee who (A) is employed by an establishment which is an institution (other than a hospital) primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises" and the remainder of that paragraph.

(b) Section 7(j) is amended by inserting after "a hospital" the following: "or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises".

HOTEL, MOTEL, AND RESTAURANT EMPLOYEES AND TIPPED EMPLOYEES

SEC. 13. (a) Section 13(b)(8) (insofar as it relates to hotel, motel, and restaurant employees) (as amended by section 12) is amended (1) by striking out "any employee" and inserting in lieu thereof "(A) any employee (other than an employee of a hotel or motel who is employed to perform maid or custodial services) who is", (2) by inserting before the semicolon the following: "and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed", and (3) by adding after such section the following:

"(B) any employee who is employed by a hotel or motel to perform maid or custodial services and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or".

(b) Effective one year after the effective date of the Fair Labor Standards Amendments of 1973, subparagraphs (A) and (B) of section 13(b)(8) are each amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-six hours".

(c) Effective two years after such date, subparagraph (B) of section 13(b)(8) is amended by striking out "forty-six hours" and inserting in lieu thereof "forty-four hours".

(d) Effective three years after such date, subparagraph (B) of section 13(b)(8) is repealed and such section is amended by striking out "(A)".

(e) The last sentence of section 3(m) is amended to read as follows: "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 the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee. The previous sentence shall not apply with respect to any tipped employe unless (1) such employee has been informed by the employer of the provisions of this section, and (2) all tips received by such employee have been retained by the employee, except that nothing herein shall prohibit the pooling of tips among employees who customarily and regularly receive tips."

SALESMEN, PARTSMEN, AND MECHANICS

SEC. 14. Section 13(b)(10) (relating to salesmen, partsmen, and mechanics, is amended to read as follows:

"(10)(A) any salesman primarily engaged in selling automobiles, trailers, trucks, farm implements, boats, or aircraft if he is employed by a non-manufacturing establishment primarily engaged in the business of selling such boats or vehicles to ultimate purchasers; or

"(B) any partsman primarily engaged in selling parts for automobiles, trucks, or farm implements and any mechanic primarily engaged in servicing such vehicles, if they are employed by a non-manufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; or".

FOOD SERVICE ESTABLISHMENT EMPLOYEES

SEC. 15 (a) Section 13(b)(18) (relating to food service and catering employees) is amended by inserting immediately before the semicolon the following: "and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed".

(b) Effective one year after the effective date of the Fair Labor Standards Amendments of 1973, such section is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(c) Effective two years after such date, such section is repealed.

BOWLING EMPLOYEES

SEC. 16. (a) Effective one year after the effective date of the Fair Labor Standards Amendements of 1973, section 13(b)(19) (relating to employees of bowling establishments) is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(b) Effective two years after such date, such section is repealed.

SUBSTITUTE PARENTS FOR INSTITUTIONALIZED CHILDREN

SEC. 17. Section 13(b) is amended by inserting after the paragraph added by section 10(b)(1) of this Act the following new paragraph:

"(23) any employee who is employed with his spouse by a nonprofit education institution to serve as the parents of children—

"(A) who are orphans or one of whose natural parents is deceased, and

"(B) who are enrolled in such institution and reside in residential facilities of the institution, while such children are in residence at such institution,

if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than $10,000; or".

EMPLOYEES OF CONGLOMERATES

SEC. 18. Section 13 is amended by adding at the end thereof the following:

"(g) The exemption from section 6 provided by paragraphs (2) and (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support, the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $10,000,000 (exclusive of excise taxes at the retail level which are separately stated), except that the exemption from section 6 provided by subparagraph (2) of subsection (a) of this section shall apply with respect to any establishment described in this subsection which [illegible] annual gross volume of sales which would permit it to qualify for the

exemption provided in paragraph (2) of subsection (a) if it were in an enterprise described in section 3(s)."

SEASONAL INDUSTRY EMPLOYEES

SEC. 19. (a) Effective January 1, 1974, sections 7(c) and 7(d) are each amended—

(1) by striking out "ten workweeks" and inserting in lieu thereof "seven workweeks", and

(2) by striking out "fourteen workweeks" and inserting in lieu thereof "ten workweeks".

(b) Effective January 1, 1974, section 7(c) is amended by striking out "fifty hours" and inserting in lieu thereof "forty-eight hours".

(c) Effective January 1, 1975, sections 7(c) and 7(d) are each amended—

(1) by striking out "seven workweeks" and inserting in lieu thereof "five workweeks", and

(2) by striking out "ten workweeks" and inserting in lieu thereof "seven workweeks".

(d) Effective January 1, 1976, sections 7(c) and 7(d) are each amended—

(1) by striking out "five workweeks" and inserting in lieu thereof "three workweeks", and

(2) by striking out "seven workweeks" and inserting in lieu thereof "five workweeks".

(e) Effective December 31, 1976, sections 7(c) and 7(d) are repealed.

COTTON GINNING AND SUGAR PROCESSING EMPLOYEES

SEC. 20. (a) Effective January 1, 1974, section 13(b)(15) is amended to read as follows:

"(15) any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup; or".

(b)(1) Effective January 1, 1974, section 13(b) is amended by adding after paragraph (23) the following new paragraph:

"(24) any employee who is engaged in ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities and who receives compensation for employment in excess of—

"(A) seventy-two hours in any workweek for not more than six workweeks in a year,

"(B) sixty-four hours in any workweek for not more than four workweeks in that year,

"(C) fifty-four hours in any workweek for not more than two workweeks in that year, and

"(D) forty-eight hours in any other workweek in that year,

at a rate not less than one and one-half times the regular rate at which he is employed; or".

(2) Effective January 1, 1975, section 13(b)(24) is amended—

(A) by striking out "seventy-two" and inserting in lieu thereof "sixty-six";

(B) by striking out "sixty-four" and inserting in lieu thereof "sixty";

(C) by striking out "fifty-four" and inserting in lieu thereof "fifty";

(D) by striking out "and" at the end of subparagraph (C); and

(E) by striking out "forty-eight hours in any other workweek in that year" and inserting in lieu thereof the following: "forty-six hours in any workweek for not more than two workweeks in that year, and

"(E) forty-four hours in any other workweek in that year,".

(3) Effective January 1, 1976, section 13(b)(24) is amended—

(A) by striking out "sixty-six" and inserting in lieu thereof "sixty";

(B) by striking out "sixty" and inserting in lieu thereof "fifty-six";

(C) by striking out "fifty" and inserting in lieu thereof "forty-eight";

(D) by striking out "forty-six" and inserting in lieu thereof "forty-four"; and

(E) by striking out "forty-four" and inserting in lieu thereof "forty".

(c)(1) Effective January 1, 1974, section 13(b) is amended by adding after paragraph (24) the following new paragraph:

"(25) any employee who is engaged in the processing of sugar beets, sugar beet molasses, or sugar cane into sugar (other than refined sugar) or syrup and who receives compensation for employment in excess of—

"(A) seventy-two hours in any workweek for not more than six workweeks in a year,

"(B) sixty-four hours in any workweek for not more than four workweeks in that year,

"(C) fifty-four hours in any workweek for not more than two workweeks in that year, and

"(D) forty-eight hours in any other workweek in that year,

at a rate not less than one and one-half times the regular rate at which he is employed; or".

(2) Effective January 1, 1975, section 13(b)(25) is amended—

(A) by striking out "seventy-two" and inserting in lieu thereof "sixty-six";

(B) by striking out "sixty-four" and inserting in lieu thereof "sixty";

(C) by striking out "fifty-four" and inserting in lieu thereof "fifty";

(D) by striking out "and" at the end of subparagraph (C); and

(E) by striking out "forty-eight hours in any other workweek in that year" and inserting in lieu thereof the following: "forty-six hours in any workweek for not more than two workweeks in that year, and

"(E) forty-four hours in any other workweek in that year,".

(3) Effective January 1, 1976, section 13(b)(25) is amended—

(A) by striking out "sixty-six" and inserting in lieu thereof "sixty";

(B) by striking out "sixty" and inserting in lieu thereof "fifty-six";

(C) by striking out "fifty" and inserting in lieu thereof "forty-eight";

(D) by striking out "forty-six" and inserting in lieu thereof "forty-four"; and

(E) by striking out "forty-four" and inserting in lieu thereof "forty".

LOCAL TRANSIT EMPLOYEES

SEC. 21. (a) Section 7 is amended by adding after the subsection added by section 9(a) of this Act the following new subsection:

"(n) In the case of an employee of an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit) in determining the hours of employment of such an employee to which the rate prescribed by subsection (a) applies there shall be excluded the hours such employee was employed in charter activities by such employer if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee's regular employment."

(b)(1) Section 13(b)(7) (relating to employees of street, suburban, or interurban electric railways or local trolley or motorbus carriers) is amended by striking out ", if the rates and services of such railway or carrier are subject to regulation by a State or local agency" and inserting in lieu thereof the following: "(regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), if such employee receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed".

(2) Effective one year after the effective date of the Fair Labor Standards Amendments of 1973, such section is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(3) Effective two years after such date, such section is repealed.

COTTON AND SUGAR SERVICES EMPLOYEES

SEC. 22. Section 13 is amended by adding after the subsection added by section 18(a) the following:

"(h) The provisions of section 7 shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year to any employee who—

"(1) is employed by such employer—

"(A) exclusively to provide services necessary and incidental to the ginning of cotton in an establishment primarily engaged in the ginning of cotton;

"(B) exclusively to provide services necessary and incidental to the receiving, handling and storing of raw cotton and the compressing of raw cotton when performed at a cotton warehouse or compress-warehouse facility, other than one operated in conjunction with a cotton mill, primarily engaged in storing and compressing;

"(C) exclusively to provide services necessary and incidental to the receiving, handling, storing, and processing of cottonseed in an establishment primarily engaged in the receiving, handling, storing and processing of cottonseed; and

"(D) exclusively to provide services necessary and incidental to the processing of sugar cane or sugar beets in an establishment primarily engaged in the processing of sugar cane or sugar beets; and".

"(2) receives for—

"(A) such employment by such employer which is in excess of ten hours in any workday, and

"(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

Any employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section or section 7."

OTHER EXEMPTIONS

SEC. 23. (a)(1) Section 13(a)(9) (relating to motion picture theater employees) is repealed.

(2) Section 13(b) is amended by adding after paragraph (25) the following new paragraph:

"(26) any employee employed by an establishment which is a motion picture theater;".

(b)(1) Section 13(a)(13) (relating to small logging crews) is repealed.

(2) Section 13(b) is amended by adding after paragraph (26) the following new paragraph:

"(27) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry poducts to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight."

(c) Section 13(b)(2) (insofar as it relates to pipeline employees) is amended by inserting after "employer" the following: "engaged in the operation of a common carrier by rail and".

EMPLOYMENT OF STUDENTS

SEC. 24. (a) Section 14 is amended by striking out subsections (a), (b), and (c) and inserting in lieu thereof the following:

"SEC. 14. (a) To the extent necessary in order to prevent curtailment of opportunities for employment, shall by regu-

lations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 6 and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.

"(b)(1)(A) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 or not less than $1.60 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6(c)), of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

"(B) Except as provided in paragraph (4)(B), the proportion of student hours of employment under special certificates issued under subparagraph (A) to the total hours of employment of all employees in any retail or service establishment may not exceed (i) such proportion for the corresponding month of the twelve-month period preceding May 1, 1961, (ii) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered by this Act for the first time on or after the effective date of the Fair Labor Standards Amendments of 1966 or the Fair Labor Standards Amendments of 1973, such proportion for the corresponding month of the twelve-month period immediately prior to the applicable effective date, or (iii) in the case of a retail or service establishment coming into existence after May 1, 1961, or a retail or service establishment for which records of student hours worked are not available, a proportion of student hours of employment to total hours of employment of all employees based on the practice during the twelve-month period preceding May 1, 1961, in similar establishments of the same employer in the same general metropolitan area in which the new establishment is located, similar establishments of the same employer in the same or nearby counties if the new establishment is not in a metropolitan area, or other establishments of the same general character operating in the community or the nearest comparable community. For the purpose of the preceding sentence, the term "student hours of employment" means student hours worked at less than $1.00 an hour, except that such term shall include, in States whose minimum wages were at or above $1.00 an hour in the base year, hours worked by students at the State minimum wage in the base year.

"(2) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the wage rate in effect under section 6(a)(5) or not less than $1.30 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at a wage rate not less than 85 per centum of the wage rate in effect under section 6(c)(3)), of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation [illegible]

"(3) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment by an institution of higher education, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 or not less than $1.60 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at a wage rate not less than 85 per centum of the wage rate in effect under section 6(c)), of full-time students (regardless of age but in compliance with applicable child labor laws) who are enrolled in such institution. The Secretary shall by regulation prescribe standards and requirements to insure that this paragraph will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by this paragraph is applicable.

"(4)(A) A special certificate issued under paragraph (1), (2), or (3) shall provide that the student or students for whom it is issued shall, except during vacation periods, be employed on a part-time basis and not in excess of twenty hours in any workweek.

"(B) If the issuance of a special certificate under paragraph (1) or (2) for an employer will cause the number of students employed by such employer under special certificates issued under this subsection to exceed four, the Secretary may not issue such a special certificate for the employment of a student by such employer unless the Secretary finds employment of such student will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection. If the issuance of a special certificate under paragraph (1) or (2) for an employer will not cause the number of students employed by such employer under special certificates issued under this subsection to exceed four—

"(i) the Secretary may issue a special certificate under paragraph (1) or (2) for the employment of a student by such employer if such employer certifies to the Secretary that the employment of such student will not reduce the full-time employment opportunties of persons other than those employed under special certificates issued under this subsection, and

"(ii) in the case of an employer which is a retail or service establishment, subparagraph (B) of paragraph (1) shall not apply with respect to the issuance of special certificates for such employer under such paragraph.

The requirement of this subparagraph shall not apply in the case of the issuance of special certificates under paragraph (3) for the employment of full-time students by institutions of higher education; except that if the Secretary determines that an institution of higher education is employing students under certificates issued under paragraph (3) but in violation of the requirements of that paragraph or of regulations issued thereunder, the requirements of this subparagraph shall apply with respect to the issuance of special certificates under paragraph (3) for the employment of students by such institution.

"(C) No special certificate may be issued under this subsection unless the employer for whom the certificate is to be issued provides evidence satisfactory to the Secretary of that student status of the employees to be employed under such special certificate."

(b) Section 14 is further amended by redesignating subsection (d) as subsection (c) and by adding at the end the following new subsection:

"(d) The Secretary may by regulation or order provide that sections 6 and 7 shall not apply with respect to [illegible] any elementary or secondary school of its students if such employment constitutes, as determined under regulations prescribed by the Secretary, an integral part of the regular education program provided by such school and such employment is in accordance with applicable child labor laws."

(c) Section 4(d) is amended by adding at the end thereof the following new sentence: "Such report shall also include a summary of the special certificates issued under section 14(b)."

CHILD LABOR

SEC. 25. (a) Section 12 (relating to child labor) is amended by adding at the end thereof the following new subsection:

"(d) In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age."

(b) Effective January 1, 1974, section 13(c)(1) (relating to child labor in agriculture) is amended to read as follows:

"(c)(1) Except as provided in paragraph (2), the provisions of section 12 relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee—

"(A) is less than twelve years of age and (i) is employed by his parent or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or (ii) is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are (because of section 13(a)(6)(A)) required to be paid at the wage rate prescribed by section 6(a)(5),

"(B) is twelve years or thirteen years of age and (i) such employment is with the consent of his parent or person standing in the place of his parent, or (ii) his parent or such person is employed on the same farm as such employee, or

"(C) is fourteen years of age or older."

(c) Section 16 is amended by adding at the end thereof the following new subsection:

"(e) Any person who violates the provisions of section 12, relating to child labor, or any regulation issued under that section, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of such penalty, when finally determined, may be—

"(1) deducted from any sums owing by the United States to the person charged;

"(2) recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

"(3) ordered by the court, in an action brought under section 15(a)(4), to be paid to the Secretary.

Any administrative determination by the Secretary of the amount of such penalty shall be final, unless within fifteen days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of title 5, United States Code, and regulations to be promulgated by the Secretary. Sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provisions of section 2 of an Act entitled 'An Act to authorize the Department of Labor to charge and collect fees for special statistical studies upon payment of the cost thereof, and for other purposes' (29 U.S.C. 9a)."

SUITS BY SECRETARY FOR BACK WAGES

SEC. 26. The first three sentences of section 16(c) are amended to read as follows: "The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under sections 6 or 7 of this Act, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of the unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) to bring an action by or on behalf of any employee and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 6 and 7 or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provision of subsection (b), unless such action is dismissed without prejudice on motion of the Secretary."

ECONOMIC EFFECTS STUDIES

SEC. 27. Section 4(d) is amended by—

(1) inserting "(1)" immediately after "(d)",

(2) inserting in the second sentence after the term "minimum wages" the following: "and overtime coverage"; and

(3) by adding at the end thereof the following new paragraph:

"(2) The Secretary shall conduct studies on the justification or lack thereof for each of the special exemptions set forth in section 13 of this Act, and the extent to which such exemptions apply to employees of establishments described in subsection (g) of such section and the economic effects of the application of such exemptions to such employees. The Secretary shall submit a report of his findings and recommendations to the Congress with respect to the studies conducted under this paragraph not later than January 1, 1976."

EFFECTIVE DATE

SEC. 28. (a) Except as otherwise specifically provided, the amendments made by this Act shall take effect on the first day of the second full month which begins after the date of the enactment of this Act.

(b) Notwithstanding subsection (a), on and after the date of the enactment of this Act the Secretary of Labor is authorized to prescribe necessary rules, regulations, and orders with regard to the amendments made by this Act.

And the Senate agree to the same.

CARL D. PERKINS,
FRANK THOMPSON, Jr.,
JOHN H. DENT,
DOMINICK V. DANIELS,
PHILLIP BURTON,
JOSEPH M. GAYDOS,
WILLIAM CLAY,
MARIO BIAGGI,
ROMANO L. MAZZOLI,
Managers on the Part of the House.

HARRISON WILLIAMS,
JENNINGS RANDOLPH,
CLAIBORNE PELL,
GAYLORD NELSON,
THOMAS F. EAGLETON,
HAROLD E. HUGHES,
WILLIAM D. HATHAWAY,
JACOB K. JAVITS,
RICHARD S. SCHWEICKER,
ROBERT T. STAFFORD,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 7935) to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rates under that Act, to expand the coverage of that Act, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

The House bill provided the following dollar amounts for the minimum wage:

1. Nonagricultural Employees.

A. Covered before 1966.

$2.00 an hour during the period ending June 30, 1974.

$2.20 an hour after June 30, 1974.

B. Covered in 1966 or 1973.

$1.80 an hour during the period ending June 30, 1974.

$2.00 an hour during the year beginning July 1, 1974.

$2.20 an hour after June 30, 1975.

Note: Presently covered Federal employees would receive two-step increase described in item 1A.

2. Agricultural Employees.

$1.60 an hour during the period ending June 30, 1974.

$1.80 an hour during the year beginning July 1, 1974.

$2.00 an hour during the year beginning July 1, 1975.

$2.20 an hour after June 30, 1976.

The Senate amendment provided the following dollar amounts for the minimum wage:

1. Nonagricultural Employees.

A. Covered before 1966.

$2.00 an hour during 1st year.

$2.20 an hour thereafter.

B. Covered in 1966 or 1973.

$1.80 an hour during 1st year.

$2.00 an hour during 2d year.

$2.20 an hour thereafter.

Note: Presently covered Federal employees would receive two-step increase described in item 1A.

2. Agricultural Employees.

$1.60 an hour during 1st year.

$1.80 an hour during 2d year.

$2.00 an hour during 3d year.

$2.20 an hour thereafter.

The Senate receded.

Both the House bill and the Senate amendment contained provisions relating to employees in Puerto Rico and the Virgin Islands. Both provided for hotel, motel, restaurant and food service employees on the islands to be treated for wage computation as if employed on the United States mainland. In addition, the House bill provided that Federal Government and Virgin Islands Government employees be treated for wage computation as if employed on the mainland. The Senate amendment differed by mandating mainland rates for employees of Puerto Rico, the Virgin Islands, and their political subdivisions. The House bill also contained provisions that Puerto Rico conglomerates be treated for wage computation as if employed on the United States mainland. The Senate amendment had no such provision.

For other covered workers in Puerto Rico and the Virgin Islands, the House bill provided wage order rates as follows:

1. Nonagricultural employees covered before 1966 to be increased by 26 percent of the pre-1973 rate and by 12.5% of such rate after one year after the first increase takes effect;

2. Nonagricultural employees covered in 1966 to be increased by three annual increases of 12.5% of such rate;

3. Agricultural employees to be increased by three annual increases of 15.4% of such rate (subsidized employees will have their increases applied to their wage rate as subsidized); and

4. Newly covered employees' rates to be set by special industry committees appointed under section 5.

No wage rate under a wage order could be less than 60 percent of the otherwise applicable wage rate in effect for U.S. mainland employees.

The Senate amendment provided as follows:

1. In first year for employees covered before 1973.—Any rate less than $0.80 an hour to be increased to $1. Subsidized agricultural employees will have their increase applied to their wage rate as increased by the subsidy. Any rate more than $0.80 an hour to be increased by $0.20 an hour.

2. In first year for employees covered in 1973.—Special industry committee to set rate at not less than $1.60 an hour, except that if an industry (or predominant portion thereof) established its inability to pay, wage rate to be not less than $1 an hour.

3. In second year and in each year thereafter for all employees.—Wage rate to be increased by $0.20 an hour in each year until the wage rate under section 6(a) is reached.

4. No wage rate under a wage order may result in reducing the increases provided in the Senate amendment.

The House bill retained the special industry committees which can adjust upward the wage rate increases required under the Act, and set rates for newly covered industries. It also retained the hardship review committees which could lower the amount of the mandated raises, in the face of documentary evidence of an inability to pay the mandated rates.

The Senate amendments retained the special industry committees which could raise the wage order rates above the mandated level, but not lower them. Hardship review committees would be discontinued.

Special industry committees were authorized to establish wage rates for newly covered industries.

The Senate recedes with an amendment as follows:

(1) Effective on the effective date of the legislation, presently covered employees are to receive the following increases:

(A) increases of 12 cents an hour if their wage order rates are less than $1.40 an hour; and

(B) increase of 15 cents an hour if their wage order rates are $1.40 an hour or higher.

An exception to this first increase is provided in the case of employees whose wage orders are increased during the period July 26 to the effective date of the legislation. With respect to such employees they are to receive this first increase only if the increase which they received during such period was less than this first increase and if it was less they are to receive the difference between the two increases.

(2) Newly covered employees (including commonwealth and municipal employees) are to have their wage rates set by special industry committees and this wage rate may [illegible] otherwise applicable rate under section 6(b) or $1.00 an hour, whichever is greater.

(3) All employees (other than commonwealth and municipal employees) will re-

ceive, beginning one year after the effective date of this legislation, yearly increases as follows:

(A) increases of 12 cents an hour per year if their wage order rates are less than $1.40, and

(B) increases of 15 cents an hour per year if their wage order rates are $1.40 an hour or higher.

Under this provision, when an employee's wage rate reaches $1.40 he will then receive the 15 cents annual increases. If such an increase for any employee will result in a wage order rate less than 60 percent of the otherwise applicable minimum wage or $1.00 an hour, which ever is greater, then the increase for such employee will be such greater figure.

(4) If a prescribed increase in the wage order rate of an employee would result in a rate equal to or greater than the otherwise applicable minimum wage rate of section 6(a) or (b), the minimum wage rate for that employee will be governed by such section and such employee will no longer be covered under a wage order.

(5) It is made clear that special industry committees may, in accordance with section 8, also provide increases in wage order rates (including rates for commonwealth and municipal employees).

(6) The authority for hardship review of the increases by special committees is discontinued.

(7) The following employees in Puerto Rico and the Virgin Islands are to have their rates set as if they were employed in the United States mainland: hotel, motel, restaurant and food services employees and United States employees and employees of the government of the Virgin Islands.

The House bill also provided that special industry committees shall recommend the otherwise applicable rate under section 6(a) or 6(b) except where substantial documentary evidence, including pertinent financial information, demonstrates an inability to pay such rate. The Senate amendment provided that the same substantial documentary evidence is required before a special industry committee could recommend less than $1.60 an hour for newly covered employees. The Senate receded.

The House bill further provided that a court of appeals may upon review of a wage order specify the minimum wage rate to be included in such wage order. The Senate amendment has no corresponding provision. The Senate receded.

With respect to Canal Zone employees, the House bill provided that the increase in the minimum wage prescribed by the 1973 Amendments would not apply to Canal Zone employees. The Senate amendment had no corresponding provision. The House receded.

The Senate amendment repealed the provision excluding the annual gross volume of so-called "Mom and Pop" stores which are part of enterprises from computation of annual gross volume of such enterprises, but continued the exclusion from coverage for such stores. The House bill contained no corresponding provision. The Senate receded.

The Senate amendment exempted from the Act's child labor provisions newsboys delivering shopping news and advertising material published by the newspaper, and repealed the child labor, minimum wage, and overtime exemptions currently applicable to homeworkers engaged in the making of holly wreaths from evergreens. The House bill had no corresponding provision. The Senate receded.

The House bill contained a minimum wage and overtime exemption for couples who serve as house-parents for children placed in an institution operated or maintained for their care and education. Individuals would have to be paid not less than $5,000 a year in cash wages and couples would have to be paid not less than $10,000 a year in cash wages. Couples would have to reside on the premises and receive their board and lodging without cost but with a provision allowing up to 30 percent credit against wages for board and lodging. The Senate amendment provided only an overtime exemption, applied only to couples who must be paid not less than $10,000 a year in cash wages, reside on the premises and receive their board and lodging without cost, and required that employees be employed to serve as parents of children who are orphans or have one parent deceased. The House receded.

The House bill required workers employed under service contracts with the U.S. whose wage rate is prescribed by section 6(e) to be paid at the section 6(a) rate. Presently, such employees are to be paid at the section 6(b) rate unless employed under certain linen supply contracts with the U.S., in which event they are to be paid at the section 6(a) rate. The Senate amendment required that all such employees be paid at the section 6(b) rate. Provision for the section 6(a) rate for certain linen supply contract employees would be repealed. The House and Senate agreed to retain the present language of section 6(e).

With regard to youth, the House bill changed existing laws (secs. 14 (b) and (c)) respecting employment of fulltime students at less than the minimum wage by—

(1) expanding employment permitted under these provisions from retail or service establishments and agriculture to any occupation other than a specified one or one determined by the Secretary to be particularly hazardous and removing the limit on the proportion of student hours of employment to total hours of employment for all employees;

(2) prescribing a new wage floor of the higher of 85 percent of the otherwise applicable minimum wage or $1.60 (or $1.30 in the case of agriculture), except for employment in Puerto Rico or the Virgin Islands where the floor is 85 percent of the otherwise applicable minimum; and

(3) except in the case of educational institutions, requiring (A) a finding of no substantial probability of job displacement if 5 or more students are to be employed, and (B) a certification by employer of no reduction in fulltime employment opportunities if less than 5 students are to be employed. The bill also required a summary of certificates issued to be included in the annual report.

The Senate amendment changed such law by expanding employment permitted to include private institutions of higher learning (but retaining for employment in retail or service establishments the existing limit on proportion of student hours of employment, except that in determining student hours of employment for purposes of such limit only those student hours (A) worked at less than $1.00 an hour, or (B) if the applicable State minimum wage law was in the base year at or above $1.00 a hour, worked in the base year at that minimum wage, would be included). The amendment retained the existing floor of 85 percent of the otherwise applicable minimum and made no change in the requirement of a finding of no substantial probability of job displacement before employment permitted, except that in the case of private institutions of higher learning no prior certification would be required unless such institutions violate the Secretary's requirements. The Senate receded with an amendment.

Under the amendment sections 14(a)-(c) will permit the employment at less than the minimum wage as follows:

1. The Secretary of Labor, to the extent [illegible] by regulations or by orders provide for the employment of learners, apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates at such wages lower than the minimum wage applicable under section 6, and subject to such limitation as to time, number, proportion, and length of service as the Secretary shall prescribe.

2. A. Full time students may be employed in retail and service establishments, at rates not less than 85 percent of the applicable minimum wage, or $1.60, whichever is higher (or 85 percent of the section 6(c) rate in the case of employment in Puerto Rico or the Virgin Islands) for a period of up to 20 hours per week (full time during vacation periods). Up to 4 students may be hired without the need for traditional pre-certification procedure (that is, a finding of no substantial probability of job displacement before the issuance of certificates) or the need to meet the historical experience test concerning the proportion of student hours worked during a base year, as set forth below. If more than four students are hired the existing pre-certification procedure will continue to apply and the proportion of student hours of employment (including for this purpose the first four students), to total hours of employment of all employees, shall not exceed such proportion for the corresponding twelve month period before the establishment was covered by the Act.

B. Full time students may be employed in agriculture at rates not less than 85 percent of the applicable minimum wage, or $1.30, whichever is higher (or 85 percent of the section 6(c) rate in the case of employment in Puerto Rico or the Virgin Islands) for a period of up to 20 hours per week (full time during vacation periods). For each student so employed after the fourth, the Secretary of Labor must find that such employment will not reduce the full-time employment of non-students before issuing certificates.

C. Full time students may be employed in higher educational institutions, at rates not less than 85 percent of the applicable minimum wage, or $1.60, whichever is higher, and a period of up to 20 hours per week (full time during vacation periods).

The conferees emphasize that the Secretary is to look to the number of students employed by an employer at any one time and not in a cumulative sense, in determining which certification procedure applies and the applicability of the historical proportion of student employment pursuant to the provision.

The House bill also provided a minimum wage and overtime exemption for students employed by an elementary or secondary school if the employment constitutes an integral part of the school's regular education program. The Senate amendment contained no corresponding provision. The Senate receded with an amendment which provides that the employment must satisfy applicable child labor provisions.

Both the House and Senate versions of the bill expanded the coverage of the Fair Labor Standards Act.

The House bill extended minimum wage and overtime protection to all employees in domestic service unless such employees' compensation would not, because of section 209(g) of the Social Security Act (requiring $50 in a calendar quarter for social security coverage), constitute wages for purposes of title II of that Act. Such employees who reside in a household would be excluded from coverage. The Senate amendment covered both day workers and "live-in" domestics, but provided only minimum wage protection for such employees and excluded babysitters from coverage.

The Senate receded to the House provision with an amendment to include "live-in" domestic service employees for minimum wage purposes but to exclude them from overtime coverage. The amendment also contains a new exemption provision for certain babysitters and companions.

It is the intent of the conferees to include within the coverage of the Act all employees whose vocation is domestic service. However, the exemption reflects the intent of the conferees to exclude from coverage babysitters for whom domestic service is a casual form of employment and companions for individuals who are unable because of age and infirmity to care for themselves. But it is not intended that trained personnel such as nurses, whether registered or practical, shall be excluded.

The conferees believe that the people who will be employed in the excluded categories are not regular bread-winners or responsible for their families' support. The fact that these people performing casual services as babysitters or services as companions do some incidental household work does not keep them from being casual babysitters or companions for purposes of this exclusion.

The Senate amendment extended minimum wage and overtime protection to civilian employees in the military departments, employees in executive agencies, employees of the U.S. Postal Service and the Postal Rate Commission, legislative and judicial employees in the competitive service. Library of Congress employees, and employees employed by any State or political subdivision of a State other than elected officials and certain aides not covered by civil service or by any interstate governmental agency. In addition, a limited overtime exemption was provided for policemen, firemen, and employees of correctional institutions if under an agreement entered into between the employer and the employee a work period of 28 consecutive days is accepted in lieu of a workweek of 7 consecutive days and if overtime compensation is to be paid for employment in excess of 192 hours in such work period during the first year, 184 hours in such period during the second year, 176 hours in such period during the third year, 168 hours in such period during the fourth year, and 160 hours in such period thereafter.

The Senate amendment also provided that the Civil Service Commission would administer application of the Act to Federal employees other than Postal employees and Library of Congress employees. The House bill provided minimum wage and overtime protection to employees of States and their political subdivisions, and minimum wage protection to all United States employees. Overtime protection extended to certain United States employees in 1966 was retained. The House bill also provided an overtime exemption for State and political subdivision employees engaged in fire protection or law enforcement activities, and made no specific provision for administration of the Act. The Secretary of Labor would administer the Act to Federal employees.

The House receded with an amendment to treat Federal employees working as policemen, firemen, or in correctional institutions in the same manner as such State employees for the purposes of overtime.

These special overtime provisions are applicable to Federal law enforcement and fire protection activities. The conferees note, however, that such professional Federal employees as criminal investigators for the Federal Bureau of Investigation will be exempt by virtue of the provisions of Section 13(a)(1).

The conferees intend that the provisions of section 5341 of title 5, United States Code, requiring the section 6(a)(1) rate for prevailing rate system employees, will continue to apply.

The Senate amendment expanded the coverage of large retail and service activities to include employees of all establishments of chain operations in which the chain enterprise has gross annual sales of more than $250,000. The House bill had no similar provision. The Senate receded with an amendment that phased out the dollar volume establishment test in sec. 13(a)(2) as follows:

1. $250,000 until July 1, 1974.
2. $225,000 on and after July 1, 1974.
3. $200,000 on and after July 1, 1975.
4. Repealed July 1, 1976.

This provision is applicable equally to employees of certain establishments which are part of covered enterprises, whether those enterprises are complete business entities in and of themselves, or parts of other unrelated business activities such as in a so-called conglomerate.

With regard to agricultural employees the Senate amendment repealed the minimum wage exemption for local seasonal hand harvest laborers. Further, the days in which an employer employs seasonal hand harvest laborers would be included in determining if an employer uses the minimum number of man-days of labor which is required before minimum wage applies (500 man-days). The House bill contained no such provision. The Senate receded with an amendment to maintain the exemption for seasonal hand harvest laborers from minimum wage, but to include such workers as employees for purposes of the man-day test for coverage.

The Senate amendment repealed the limited overtime exemption provided by sections 7(c) and 7(d) for employees or industries found to be of a seasonal nature or characterized by marked annually recurring seasonal peaks of operation. The House bill contained no such provision. The Senate receded with an amendment which provided for a phase out of section 7(c) and 7(d) exemptions other than for cotton processing and sugar processing, as follows:

1. On January 1, 1974 the seasonal periods for exemption are reduced from 10 weeks to 7 weeks and from 14 weeks to 10 weeks.

2. On such date, the workweek exemptions are reduced from 50 hours to 48 hours.

3. Effective 1 year after such date, the seasonal periods for exemption are reduced from 7 weeks to 5 weeks and from 10 weeks to 7 weeks.

4. Effective 2 years after such date, the seasonal periods for exemption are reduced from 5 weeks to 3 weeks and from 7 weeks to 5 weeks.

5. Effective three years after such date, sections 7(c) and 7(d) are repealed.

The Senate amendment provided that the overtime exemption for cotton ginning and sugar processing employees (other than employees engaged in processing maple sap into maple syrup or maple sugar) be repealed. The House bill contained no such provision. The Senate receded with an amendment to phase down the overtime exemption for cotton ginning and sugar processing employees as follows:

1. In 1973, there is no change in the present overtime exemption.

2. In 1974, the workweek exemption is as follows: 72 hours each week for 6 weeks of the year; 64 hours each week for 4 weeks of the year; 54 hours each week for 2 weeks of the year; 48 hours each week for the balance of the year.

3. In 1975, the workweek exemption is as follows: 66 hours each week for 6 weeks of the year; 60 hours each week for 4 weeks of the year; 50 hours each week for 2 weeks of the year; 46 hours each week for 2 weeks of the year; 44 hours each week for the balance of the year.

4. In 1976, the workweek exemption is as follows: 60 hours each week for 6 weeks of the year; 56 hours each week for 4 weeks of the year; 48 hours each week for 2 weeks of the year; 44 hours each week for 2 weeks of the year; 40 hours each week for the balance of the year.

The workweek exemptions are applicable during the normal season or period of [illegible] twelve consecutive months as opposed to the calendar year and are not limited to a period of consecutive weeks.

In addition, the cotton processing and sugar processing exemptions under section 7 of the law are retained but limited to 48 hours during the appropriate weeks. Furthermore, it is provided that an employer who receives an exemption under this subsection will not be eligible for other overtime exemptions under section 13(b)(24) or (25) or section 7.

The Senate amendment repealed the minimum wage and overtime exemption for employees of motion picture theaters. The House bill contained no such provision. The Senate receded with an amendment which repealed the minimum wage exemption and which continues the overtime exemption for these employees.

The Senate amendment repealed the minimum wage exemption applicable to forestry and lumbering operations with 8 or fewer employees. The overtime exemption for such operations is retained. The House bill had no such provision. The House receded.

The House bill provided for a limited overtime exemption (14 weeks, 10 hours per day, and 48 hours per week) for certain employees engaged in activities related to the sale of tobacco. Such employees are currently covered by the section 7(c) exemption pursuant to determination by the Secretary. The Senate amendment had no corresponding provision. The Senate receded.

The Senate amendment repealed the minimum wage and overtime exemption for employees engaged in the processing of shade grown tobacco prior to the stemming process for use as cigar wrapper tobacco. The House bill had no such provision. The Senate receded with an amendment to maintain the overtime exemption for these employees.

The Senate amendment repealed the overtime exemption for employees of oil pipeline transportation companies. The House bill had no such provision. The House receded.

The Senate amendment repealed the minimum wage and overtime exemption for persons engaged in handling telegraph messages for the public under an agency or contract arrangement with a telegraph company, if they are so engaged in retail or service establishments exempt under section 13(a)(2) and if the revenues for such messages are less than $500 a month. The House bill contained no corresponding provision. The Senate receded with an amendment to phase out the overtime exemption as follows:

1. 48 hours in the first year after the effective date.
2. 44 hours in the second year.
3. Repealed thereafter.

The Senate amendment repealed the overtime exemption for seafood canning and processing employees. The House bill contained no such provision. The Senate receded with an amendment which phases out the exemption as follows:

1. In the first year after the effective date of the 1973 Amendments, the workweek exemption is 48 hours.

2. In the second year, the workweek exemption is 44 hours.

3. Effective on the beginning of the third year, the exemption is repealed.

With regard to certain local transit operating employees, the House bill phased down the overtime exemption in three steps as follows: During the first year overtime compensation will be required for hours of employment over 48 in a week, during the second year such compensation will be required for hours of employment over 44 in a week, and after the second year such compensation will be required for hours of employment over 42 in a week. In addition, in determining the hours of employment (for purposes of overtime compensation) of a bus driver or other local transit operator (the hours of his employment in charter activities [illegible] to be included if the employment in charter activities was performed pursuant to an agreement with the employer and if such employment is

not part of the employee's regular employment. The Senate amendment contained a similar provision but for all local transit employees, with the exemption to be repealed in the third year. The House receded.

It is noted that by virtue of the conferees' action on coverage of State and local government employment, together with its action on overtime pay in the local transit industry, operating employees of publicly and privately owned transit companies will be treated identically.

The Senate amendment provided that the overtime exemption for employees employed by hotels, motels, and restaurants be limited as follows: During the first year overtime compensation would be required for hours of employment over 48 in a week, and after the first year such compensation would be required for hours of employment over 46 in a week. The House bill repealed the overtime exemption for maids and custodial employees of hotels. The Senate receded with an amendment which provides that the overtime exemption for hotel, motel, and restaurant employees be limited as follows: during the first year overtime compensation will be required for hours of employment in excess of 48 in a week and after the first year such compensation will be required for hours of employment in excess of 46 in a week. For maids and custodial employees of hotels and motels the phase down is as follows:

1. 48 hours in the first year.
2. 46 hours in the second year.
3. 44 hours in the third year.
4. Repealed thereafter.

The Senate amendment revised the tip credit provisions of the Act so that they would not apply unless the employer has informed each of his tipped employees of the tip credit provision and all tips received by a tipped employee have been retained by such tipped employee (either individually or through a pooling arrangement).

The House bill contained no such provision. The House receded.

The conferees intend that the employer explain the tip provision of the Act to the employee, although the explanation may be in the form of a notice posted on a bulletin board accessible and understandable to all such employees.

The House bill replaced the limited overtime exemption for employees of nursing homes (overtime compensation required for hours of employment in excess of 48 in a week) by an overtime exemption (initiated by an agreement between the employer and his employees) which substitutes a 14-consecutive-day work period for the workweek and requires overtime compensation for employment over 8 hours in any workday and for over 80 hours in such work period. The Senate amendment provided that the limited overtime exemption for employees of nursing homes be further limited as follows: During the first year overtime compensation would be required for hours of employment in excess of the current 48 in a week, during the second year such compensation would be required for hours of employment in excess of 46 in a week, and after the second year such compensation would be required for hours of employment in excess of 44 in a week. The Senate receded.

The Senate amendment repealed the 40 percent tolerance for nonexempt activities by executive and administrative employees of retail and service establishments, and thereby made applicable to such employees the 20 percent tolerance for non-exempt activities by all other executive and administrative employees currently in effect under regulations of the Secretary. The House bill contained no corresponding provision. The Senate receded.

The House bill provided that establishments engaged in the [illegible] repairing of clothing or fabrics are to be considered as service establishments in administration of sections 7(i) (commission employees) and 13(a)(1) (executive and administrative personnel and outside salesmen) of the Act. Such activities are not now considered retail or service under the Act. The Senate amendment contained no corresponding provision. The House receded.

The Senate amendment provided that the existing overtime exemption for partsmen and mechanics in nonmanufacturing establishments primarily engaged in selling automobiles, trailers, or trucks be repealed; that the overtime exemption for salesmen, partsmen, and mechanics in nonmanufacturing establishments engaged in selling aircraft be repealed; that the overtime exemption for salesmen in automobile, trailer, or truck sales establishments be retained, and that the overtime exemption for salesmen, partsmen, and mechanics in farm implement sales establishments be retained. The House bill contained no similar provisions but added an overtime exemption for salesmen, partsmen, and mechanics who are employed by nonmanufacturing establishments engaged in boat sales and who sell or service boats. The Senate receded with an amendment under which: the overtime exemption for partsmen and mechanics in nonmanufacturing establishments primarily engaged in selling trailers is repealed; the overtime exemption for partsmen and mechanics in nonmanufacturing establishments engaged in selling aircraft is repealed; the overtime exemption for salesmen in automobile, trailer, truck sales and aircraft establishments is retained; the overtime exemption for salesmen, partsmen, and mechanics in farm implement sales establishments is retained; the exemption for partsmen and mechanics in automobile and truck sales establishments is retained; and, an overtime exemption is provided for salesmen engaged in selling boats.

The Senate amendment provided that the overtime exemption for food service establishment employees be repealed as follows: During the first year overtime compensation would be required for hours of employment over 48 in a week, during the second year such compensation would be required for hours of employment over 44 in a week, and thereafter such compensation would be required for employment in excess of 40 hours in a week. The House bill contained no such provision. The House receded.

The Senate amendment provided that the limited overtime exemption for employees of bowling establishments (overtime compensation required for hours in excess of 48 in a week) be repealed in two steps as follows: During the second year after enactment overtime compensation would be required for hours in excess of 44 in a week, and thereafter such compensation would be required for hours of employment in excess of 40 in a week. The House bill contained no such provision. The House receded.

The House bill provided that certain of the minimum wage and overtime exemptions provided in section 13(a) and 13(b) would not apply to a business establishment which controls, is controlled by, or is under common control with, but not related for a common business purpose to another establishment, if the combined sales or business volume of such establishments exceeded $10,000,000. The Senate amendment had no comparable provision. The House receded with an amendment under which the minimum wage exemptions provided in section 13(a)(2) for certain retail and service establishments, and section 13(a)(6) relating to agricultural employees, would not be available to an establishment which controls, is controlled by, or under common control with, another establishment the activities of which are not related for a common business purpose, but materially support the activities of the first establishment, and the combined gross volume of the conglomerate is more than $10,000,000. Also, the section 13(a)(2) minimum wage exemption, relating to retail and service establishments, would be phased out for establishments which are part of conglomerates on the same schedule as applicable to the phase-out of the same exemption in the case of chain stores.

It is not the intention of the conferees that this provision shall apply on a mere showing of ownership or common control. Some relationship must exist demonstrating some interdependence for treating otherwise separate businesses as a unit for purposes of denying exemptions from section 6 which would otherwise be available under sections 13(a)(2) and 13(a)(6). Finally, nothing in this provision affects any overtime exemption or any minimum wage exemption other than those provided for retail and service establishments under subsection 13(a)(2) or agricultural employees under section 13(a)(6).

With regard to child labor the Senate amendment provided as follows:

1. The employment of children under age 12 in agriculture is prohibited unless they are employed on farms owned or operated by their parents or guardians, and children who are 12 or 13 may work in agriculture only if they have the written consent of their parents or guardians or if the parent or guardian is employed on the same farm. Existing law permits the employment (outside of school hours) of children of any age on farms in nonhazardous occupations.

2. Any person who violates the child labor provisions of the Act (or any regulation issued under such provisions) is subject to a civil penalty of not to exceed $1,000 for each such violation.

3. The Secretary of Labor may issue regulations requiring employers to obtain from any employee proof of the employee's age.

The House bill contained no similar provision. The Senate receded with an amendment that the provisions of this section (described in paragraph (1) above) shall not become effective until January 1, 1974, that the provisions prohibiting the employment of children under 12 on farms other than those owned or operated by their parents shall apply only in the case of employment on farms covered by the Act under the 500 man-day test, including conglomerate farms, and that parental consent shall be required for such children to work no non-covered farms.

The Senate amendment provided that the tip credit provision of the Act is not to apply unless the employer has informed each of his tipped employees of the tip credit provision and all tips received by tipped employees have been retained by them (either individually or through a pooling arrangement). The House bill contained no such provision. The House receded.

The Senate amendment amended the Age Discrimination in Employment Act of 1967 to include within the scope of its coverage Federal, State, and local government employees (other than elected officials and certain aides not covered by civil service), and to expand coverage from employers with 25 or more employees to employers with 20 or more employees. The annual authorization of appropriations ceiling was raised from $3 million to $5 million. The Age Discrimination Employment Act prohibits discrimination in employment on the basis of age in matters of hiring, job retention, compensation, and other terms, conditions, or privileges of employment. Protection under the Act is limited to individuals who are between the ages of 40 and 65. The House bill contained no similar provisions. The Senate receded.

The Senate amendment amended section 16(c) to authorize the Secretary not only to [illegible] (as he can do now) but also to sue for an equal amount of liquidated damages without requiring a

written request from the employee. The Secretary could also sue even though the suit might involve issues of law that have not been finally settled by the courts. In the event the Secretary brings such an action, the right of an employee provided by 16(b) to bring an action on behalf of himself, or to become party to such an action would terminate, unless such action is dismissed without prejudice, on motion by the Secretary. The House bill contained no similar provision. The House receded.

The Senate amendment amended section 9 of the Walsh-Healey Act to extend to employees of regulated private carriers the exemption from that Act presently applicable to employees of regulated common carriers. The House bill contained no similar provision. The Senate receded.

The Senate amendment contained a provision making clear the right of employees of State and local governments to bring private actions under Section 16(b) in Federal or State courts of competent jurisdiction for recovery under the Act. This provision was intended to overcome the decision of the Supreme Court in *Employees of the Department of Public Health and Welfare* v. *Missouri*, 93 S.Ct. 1614 (April 18, 1973) which held that Congress, in extending coverage under the 1966 amendments to certain employees of State and local governments had not explicitly provided an individual right of action in the Federal courts. The Senate amendment also provided an amendment to the Portal to Portal Act of 1947 which would preserve individual rights of action of State or local government employees which would otherwise be barred by the statute of limitations as a result of the Supreme Court's decision. A further provision made clear the right of Federal employees to bring an action in Federal or State court against the United States under Section 16(b) of the Act, in addition to the administrative remedies provided in the Senate amendment.

The House bill contained no similar provisions. The Senate receded with an amendment providing that employees of a public agency (defined to include the Government and agencies of the United States, a State or political subdivision, or any interstate governmental agency) may maintain an action against that public agency under section 16(b) in any Federal or State court of competent jurisdiction, and suspending the statute of limitations to preserve rights of actions of State or local government employees which would otherwise be barred as a result of the Supreme Court's decision. It is emphasized that this provision is a limited suspension of the statute of limitations and is applicable only to certain public employees.

The Secretary would be required by the Senate amendment to conduct studies (1) on the economic effects of the changes made in the minimum wage and overtime coverage, and (2) on the justification or lack thereof for each of the exemptions provided by sections 13(a) and 13(b). The report on the study described in clause (1) would be due not later than January 1, 1975, and the report on the study described in clause (2) would be due not later than January 1, 1976. The House bill contained no corresponding provision. The Senate receded with an amendment providing that these studies be provided for under section 4(d) of the Act and also requiring that such studies include on examination of the extent to which employees of conglomerates receive the section 13(a) and (b) exemptions and the economic effect of their inclusion in such exemptions.

The Secretary would have been required by the Senate amendment to contract for a study to determine the extent (if any) of the impact on employment of each increase in the minimum wage prescribed by the 1973 Amendments and to develop the necessary information on the probable impact (if any) on employment of future increases in minimum wages. Ninety days prior to the effective date of each increase prescribed by such Amendments, the Secretary is to provide the Congress with an employment impact statement establishing the probable impact on employment by category of employment of each such increase, together with a summary of the basis for each statement. The House bill contained no corresponding provision. The Senate receded.

The Senate amendment amended the Economic Stabilization Act of 1970 to provide that the President shall make appropriate adjustments in the maximum price which may be charged under the provisions of Executive Order 11723 (dated June 13, 1973), or any subsequent Executive order promulgated under that Act, for any agricultural commodity (at any point in the distribution chain) as to which the Secretary of Agriculture certifies to the President that the supply of the commodity will be reduced to unacceptably low levels as a result of any price controls or freeze order (or regulation) promulgated under that Act and that alternative means for increasing the supply are not available. The House bill contains no corresponding provision. The Senate receded.

The Senate amendment provided that the effective date of the Act is the 60th day following the date of the enactment of the bill. The House bill provided that the effective date is the first day of the second full month which begins after the date of the enactment of the bill, or August 1, 1973, whichever occurs first. The Senate receded with an amendment to make the effective date of the Act the first day of the second full month after the date of enactment.

CARL D. PERKINS,
FRANK THOMPSON, Jr.,
JOHN H. DENT,
DOMINICK V. DANIELS,
PHILLIP BURTON,
JOSEPH M. GAYDOS,
WILLIAM CLAY,
MARIO BIAGGI,
ROMANO L. MAZZOLI,
Managers on the Part of the House.

HARRISON WILLIAMS,
JENNINGS RANDOLPH,
CLAIBORNE PELL,
GAYLORD NELSON,
THOMAS F. EAGLETON,
HAROLD E. HUGHES,
WILLIAM D. HATHAWAY,
JACOB K. JAVITS,
RICHARD S. SCHWEICKER,
ROBERT T. STAFFORD,
Managers on the Part of the Senate.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

[*Pursuant to the order of the House of July 26, 1973, the following reports were filed July 27:*]

Mr. WRIGHT: Committee of conference. Conference report on S. 502 (Rept. No. 93-410). Ordered to be printed.

Mr. BOLAND: Committee of Conference. Conference report on H.R. 8825 (Rept. No. 93-411). Ordered to be printed.

Mrs. SULLIVAN: Committee on Merchant Marine and Fisheries. H.R. 37. A bill to provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes; with amendment (Rept. No. 93-412). Referred to the Committee of the Whole House on the State of the Union.

Mr. PERKINS: Committee of conference. Conference report on H.R. 7935 (Rept. No. 93-413). Ordered to be printed.

[*Pursuant to the order of the House of July 25, 1973, the following report was filed July 28:*]

Mr. HALEY: Committee on Interior and Insular Affairs. H.R. 9130. A bill to amend section 28 of the Mineral Leasing Act of 1920, and to authorize a trans-Alaska oil and gas pipeline, and for other purposes; with amendment (Rept. No. 93-414). Referred to the Committee of the Whole House on the State of the Union.