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93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 93-913

FAIR LABOR STANDARDS AMENDMENTS OF 1974

MARCH 15, 1974.—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

SEPARATE AND DISSENTING VIEWS

[To accompany H.R. 12435]

The Committee on Education and Labor, to whom was referred the bill (H.R. 12435) 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 with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

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 conditions 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, $2.00 an hour beginning January 1, 1975, $2.20 an hour hour beginning January 1, 1976. The proposed minimum wage rate for nonagricultural employees covered under the minimum wage provisions of the Act by the 1966 and 1974 amendments will be $1.90 an hour beginning the first day of the second full month after the date of enactment, $2.00 an hour beginning January 1, 1975,, $2.20 an hour beginning January 1, 1976, and $2.30 an hour beginning January 1, 1977. For agricultural employees covered under the minimum wage provisions of the Act, the minimum wage rate will be $1.60 an hour beginning on the first day of the second full month after the date of enactment, $1.80 an hour beginning January 1, 1975, $2.00 an hour beginning January 1, 1976, $2.20 an hour beginning January 1, 1977, and $2.30 an hour beginning January 1, 1978. The minimum wage rates for hotel, motel, restaurant, food service, 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 increases in the wage orders.

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.

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 policemen, firemen and employees of correctional institutions), domestic service employees, employees of retail and service establishments, and telegraph agency employees. Minimum wage coverage is extended to conglomerate employees in agriculture, motion picture theatre employees, logging employees, and

shade grown tobacco processing employees. Overtime coverage is extended to seasonal industry and agricultural processing employees, hotel, motel, and restaurant employees, food service employees, bowling establishment employees, nursing home employees, local transit employees, cotton ginning and sugar processing employees, seafood canning and processing employees, oil pipeline transportation employees, and partsmen and mechanics in certain vehicle sales establishments.

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 2d full month after the date of enactment.
	2.10	Jan. 1, 1975.
	2.30	Jan. 1, 1976.
Nonagricultural employees covered under the minimum wage provisions of the Fair Labor Standards Act by the 1966 amendments and 1974 amendments.	1.90	1st day of the 2d full month after the date of enactment.
	2.00	Jan. 1, 1975.
	2.20	Jan. 1, 1976.
	2.30	Jan. 1, 1977.
Agricultural employees covered under the minimum wage provisions of the Fair Labor Standards Act.	1.60	1st day of the 2d full month after the date of enactment.
	1.80	Jan. 1, 1975.
	2.00	Jan. 1, 1976.
	2.20	Jan. 1, 1977.
	2.30	Jan. 1, 1978.

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

Minimum wage coverage will be extended to the following:
- Federal employees.
- State and local employees.
- Domestic service employees.
- Retail and service employees.
- Conglomerate employees (in agriculture).
- Telegraph agency employees.
- Motion picture theater employees.
- Logging employees.
- Shade grown tobacco processing employees.

Overtime coverage will be extended to the following:
- Federal employees.
- State and local employees.
- Domestic service employees.
- Retail and service employees.
- Seasonal industry and agricultural processing employees.
- Telegraph agency employees.
- Hotel, motel, and restaurant employees.
- Food service employees.
- Bowling establishment employees.
- Nursing home employees.
- Transit (local) employees.
- Cotton ginning and sugar processing employees.
- Seafood canning and processing employees.
- Oil pipeline transportation employees.
- Partsmen and mechanics in certain vehicle sales establishments.

COMMITTEE CONSIDERATION

Almost four 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 pov-

erty. 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 proposed to cover prompted the General Subcommittee on Labor to begin immediate consideration of legislation to amend the Fair Labor Standards Act in the first session of 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, 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 21–9—ordered reported H.R. 7935, a clean bill. Subsequent to House passage of H.R. 7935, amended, on June 6, 1973, the bill was further amended and approved by a House-Senate Conference Committee on July 27, 1973. On September 6, 1973 the conference bill was vetoed by the President and the House sustained the veto on September 19, 1973.

Increasing inflation has continued to erode the value of the dollar, thus further aggravating the economic plight of low wage workers. In recognition of this serious situation, the General Subcommittee on Labor again initiated remedial legislation. On February 6, 1974, the subcommittee by a unanimous voice vote ordered H.R. 12435, amended, reported to the Committee on Education and Labor, and on March 13, 1974, the Committee ordered H.R. 12435 reported to the House by a roll call vote of 33–0.

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 January 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 com-

panies 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. * * *
>
> 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.
>
> 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.
>
> 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."
>
> In his 1955 report, the President indicated that "the coverage of the minimum wage is no less important than its amount."
>
> 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."
>
> 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 49.4 million of the nearly 80.2 million wage and salary workers in the United States. A substantial number of these 80.2 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 66 million—who might be brought within the wage and hour guarantees, substantial millions are not in fact covered.

TABLE 3.—ESTIMATED NUMBER OF NONSUPERVISORY EMPLOYEES COVERED UNDER THE MINIMUM WAGE PROVISIONS OF THE FAIR LABOR STANDARDS ACT, BY INDUSTRY[1]

[In thousands]

Industry	Total number of employees in industry	Number of employees covered	Number of employees not covered or exempt
Agriculture	1,232	513	719
Mining	573	568	5
Contract construction	3,625	3,608	17
Manufacturing	17,628	17,524	104
Transportation and public utilities	4,181	4,104	77
Wholesale trade	2,691	2,683	8
Retail trade	11,015	7,149	3,866
Finance, insurance, real estate	2,813	2,662	151
Service industries (except private households)	9,626	7,087	2,539
Private households	2,060		2,060
Federal Government	2,308	615	1,693
State and local government	6,300	2,914	3,386
Total	64,052	49,427	14,625

[1] Estimates exclude 2,147,000 outside salesmen exempt under sec. 13(a)(1) of the act.

TABLE 4.—ESTIMATED NUMBER OF NONSUPERVISORY EMPLOYEES COVERED UNDER THE OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT, BY INDUSTRY [1]

[In thousands]

Industry	Total number of employees in industry	Number of employees covered	Number of employees not covered or exempt
Agriculture	1,232		1,232
Mining	573	556	17
Contract construction	3,625	3,570	55
Manufacturing	17,628	16,856	772
Transportation and public utilities	4,181	2,407	1,774
Wholesale trade	2,691	2,476	215
Retail trade	11,015	5,157	5,858
Finance, insurance, real estate	2,813	2,661	152
Service industries (except private households)	9,626	5,511	4,115
Private households	2,060		2,060
Federal Government	2,308	615	1,693
State and local government	6,300	2,764	3,536
Total	64,052	42,573	21,479

[1] Estimates exclude 2,147,000 outside salesmen exempt under sec. 13(a)(1) of the act.

Brief Summary of Provisions

Section 1. *Short Title.*—Provides that the act may be cited as the "Fair Labor Standards Amendments of 1974".

Secs. 2 and 3. *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, not less than $2.10 an hour beginning January 1, 1975, and not less than $2.30 an hour beginning January 1, 1976.

Provides a minimum wage rate for nonagricultural employees covered by the 1966 and 1974 amendments to the act of not less than $1.90 an hour beginning on the first day of the second full month after the date of enactment, not less than $2 an hour beginning January 1, 1975, not less than $2.20 an hour beginning January 1, 1976, and not less than $2.30 an hour beginning January 1, 1977.

Sec. 4. *Agricultural Employees.*—Provides a minimum wage rate for agricultural (and domestic service—see sec. 7) 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, not less than $1.80 an hour beginning January 1, 1975, not less than $2 an hour beginning January 1, 1976, not less than $2.20 an hour beginning January 1, 1977, and not less than $2.30 an hour beginning January 1, 1978.

Sec. 5. *Government, Hotel, Motel, Restaurant, and Food Service Employees in Puerto Rico and the Virgin Islands.*—The minimum wage rate for hotel, motel, restaurant, food service, 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.

Other Employees in Puerto Rico and the Virgin Islands.—Provides for an increase of $0.12 an hour on wage orders presently under $1.40 an hour, and $0.15 an hour on wage orders $1.40 or more an hour, effective on the first day of the second full month after the date of

enactment. Provides additional annual increases of identical amounts until the wage order rates are in conformance with applicable rates in the United States. In the case of an agricultural employee whose hourly wage is increased (above that required by wage order) by a subsidy paid by the Government of Puerto Rico, the increases shall be applied to the sum of (1) the wage rate and (2) the amount of the subsidy.

Provides for the establishment of special industry committees to recommend minimum wage rates for employees newly covered by the 1974 amendments (including employees of the Government of Puerto Rico and its political subdivisions). The recommended rates cannot be less than 60 per centum of the rates applicable to U.S. employees covered by the 1966 and 1974 amendments, or $1 an hour, whichever is higher.

With respect to other employees covered under wage orders, the rates cannot be less than 60 per centum of the otherwise applicable rates in the United States, or $1 an hour, whichever is higher. Employees of the Government of Puerto Rico and its political subdivisions are subject to this provision only in the initial establishment of wage order rates pursuant to the recommendations of special industry committees.

Provides further that, special industry committees recommend the minimum wage rate applicable in the United States except where pertinent financial information demonstrates inability to pay such rate. Also, that a court of appeals may upon review of a wage order specify the minimum wage rate to be included in the wage order.

SEC. 6. *Federal and State Employees.*—Amends definitions of the act to permit the extension of minimum wage and overtime coverage to Federal, State, and local public employees. Federal, State, and local public employees engaged in fire protection or law enforcement activities, however, are exempt from the overtime provision.

SEC. 7. *Domestic Service Workers.*—States a finding of Congress that domestic service in households affects commerce and that the minimum wage and overtime protections of the act should apply to such employees. This section prescribes therefore, the minimum wage (not less than $1.90 an hour beginning on the first day of the second full month after the date of enactment, not less than $2.00 an hour beginning January 1, 1975, not less than $2.20 an hour beginning January 1, 1976, and not less than $2.30 an hour beginning January 1, 1977) and overtime (compensation for hours worked in excess of 40 per week) rates applicable to such employees. If such employee resides in the household of the employer, minimum wage compensation only is required. The provision does not apply to a person who, on an intermittent basis, provides baby sitting services, or who provides companion services. Domestic service employees are described as those who are engaged in domestic service employment more than 8 hours during a workweek.

SEC. 8. *Retail and Service Establishments.*—Reduces and ultimately repeals the "dollar volume" test for coverage of retail and service establishments of a "chain" under the minimum wage and overtime provisions of the act. Effective July 1, 1974, the minimum wage and overtime provisions of the act will apply to such establishments with

gross annual sales or services of $225,000 or more; and effective July 1, 1975, gross annual sales or services of $200,000. Beginning July 1, 1976, all such retail and service establishments will be subject to the minimum wage and overtime provisions of the act.

SEC. 9. *Tobacco Employees.*—Retains a limited overtime exemption for employees engaged in activities related to the sale of tobacco. Overtime compensation must be paid for employment in excess of 10 hours in any workday and 48 hours in any workweek for a period or periods not to exceed 14 workweeks in the aggregate in any calendar year. Without this section, the limited overtime exemption would be ultimately repealed by section 19.

Also repeals the present minimum wage exemption for employees engaged in the processing of shade-grown tobacco.

SEC. 10. *Telegraph Agency Employees.*—Repeals the minimum wage exemption for employees of small telegraph agencies, and reduces and ultimately repeals the overtime exemption for such employees. During the first year after the effective date of the 1974 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 of 40 per week.

SEC. 11. *Seafood Canning and Processing Employees.*—Reduces and ultimately repeals the overtime exemption for employees engaged in the processing and canning of seafood. During the first year after the effective date of the 1974 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 of 40 per week.

SEC. 12. *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. 13. *Hotel, Motel, and Restaurant Employees and Tipped Employees.*—Reduces the overtime exemption for employees (other than maids and custodial employees in hotels and motels) employed in hotels, motels, and restaurants. During the first year after the effective date of the 1974 amendments, overtime compensation must be paid to such employees for hours worked in excess of 48 per week, and thereafter, for hours worked in excess of 46 per week.

The overtime exemption for maids and custodial employees in hotels and motels is reduced and ultimately repealed. During the first year after the effective date of the 1974 amendments, such employees must be paid overtime compensation for hours worked in excess of 48 per week; during the second year, for hours worked in excess of 46 per week; during the third year, for hours worked in excess of 44 per week; and thereafter, for hours worked in excess of 40 per week.

With respect to tipped employees, 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 a tipped employee have been retained by the tipped employee (either individually or through a pooling arrangement).

SEC. 14. *Salesmen, Partsmen, and Mechanics.*—Provides an overtime exemption for any salesmen primarily engaged in selling automobiles, trailers, trucks, farm implements, boats, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers. Also provides an overtime exemption for partsmen and mechanics of automobile, truck, and farm implement dealerships.

SEC. 15. *Food Service Establishment Employees.*—Reduces and ultimately repeals the overtime exemption for employees of food service establishments. During the first year after the effective date of the 1974 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 of 40 per week.

SEC. 16. *Bowling Establishment Employees.*—Reduces and ultimately repeals the overtime exemption for employees employed in bowling establishments. Beginning 1 year after the effective date of the 1974 amendments, such employees must be paid overtime compensation for hours worked in excess of 44 per week, and beginning 2 years after the effective date, for hours worked in excess of 40 per week.

SEC. 17. *Substitute Parents for Institutionalized Children.*—Provides an overtime exemption for couples who serve as houseparents of children who are institutionalized by reason of being orphaned or having one deceased parent. Further provides that such employed couples must receive cash wages of not less than $10,000 annually, and reside on the premises of the institution and receive their board and lodging without cost.

SEC. 18. *Employees of Conglomerates.*—Precludes the availability of the minimum wage exemption presently applicable for certain employees employed in agriculture to a controlling conglomerate with an annual gross volume of sales made or business done in excess of $10 million, if the conglomerate materially supports the employing agricultural entity.

SEC. 19. *Seasonal Industry Employees.*—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 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 employment in seasonal industries is reduced to 48 hours in any workweek for not more than 7 workweeks beginning on the effective date of the 1974 amendments, not more than 5 workweeks beginning January 1, 1975, and not more than 3 workweeks beginning January 1, 1976. The overtime exemption for employment in agricultural processing is reduced to not more than 7 workweeks beginning on the effective date of the 1974 amendments, not more than 5 workweeks beginning January 1, 1975, and not more than 3 workweeks beginning January 1, 1976. In the case of an em-

ployer 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 1974, to 7 workweeks during 1975, and to 5 workweeks during 1976. Effective December 31, 1976, the overtime exemptions are repealed.

SEC. 20. *Cotton Ginning and Sugar Processing Employees.*—Repeals the current overtime exemption and provides a limited overtime exemption for certain employees engaged in cotton ginning and sugar processing as follows:

Annual workweeks	Hours of work permitted during each such workweek without payment of overtime compensation		
	1974	1975	1976 and thereafter
6 weeks	72	66	60
4 weeks	64	60	56
2 weeks	54	50	48
Do	48	46	44
Balance of year	48	44	40

SEC. 21. *Transit Employees.*—Reduces and ultimately repeals 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. During the first year after the effective date of the 1974 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 of 40 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. 22. *Cotton and Sugar Services Employees.*—Retains a limited overtime exemption for certain employees engaged in cotton ginning and sugar processing activities. Overtime compensation must be paid for employment in excess of 10 hours in any workday and 48 hours in any workweek for a period or periods not to exceed 14 workweeks in the aggregate in any calendar year. Without this section, the limited overtime exemption would be ultimately repealed by section 19.

SEC. 23. *Motion Picture Theaters, Logging Crews, and Oil Pipeline Transportation Employees.*—Repeals the minimum wage exemption for employees of motion picture theaters, and logging employees, but retains the overtime exemption for such employees. Also repeals the overtime exemption for employees of oil pipeline transportation companies.

SEC. 24. *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 retail and service establishments, agriculture, and institutions of higher education at which such students are enrolled. 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 agriculture), whichever is the higher, pursuant to special certificate 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 of other workers. The certification requirements are not applicable to the employment of full-time students by the educational institutions at which they are enrolled. 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 24 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 and is in accordance with applicable child labor laws.

SEC. 25. *Child Labor.*—The employment of children under age 12 in agriculture is prohibited unless they are employed on a farm owned or operated by their parents or guardians, or on a farm exempt from the minimum wage provisions of the act. Children 12 or 13 years of age may work in agriculture only with the written consent of their parents or guardians or if their parents or guardians are employed on the same farm. For persons 14 years of age or older, prior consent is not required for employment in agriculture.

Any person who violates the child labor provisions of the act or applicable regulations, is subject to civil penalties. The Secretary is permitted to require employers to obtain employee's proof of age.

SEC. 26. *Suits by the Secretary.*—Authorizes the Secretary to sue for back wages (which 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 section 16(b) of the act 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.

SEC. 27. *Economic Effects Studies.*—In addition to and in furtherance of the requirements of section 4(d) of the act, the Secretary is required to conduct studies on the justification or lack thereof for each of the exemptions provided by sections 13(a) and 13(b) of the act. Such studies shall include an examination of the extent to which em-

ployees of conglomerates receive the sections 13 (a) and (b) exemptions and the economic effect of their inclusion in such exemptions. The report on the study would be due not later than January 1, 1976.

SEC. 28. *Nondiscrimination on Account of Age in Government Employment.*—Extends the provisions of the Age Discrimination in Employment Act to an employer with 20 or more employees. Also extends the provisions of the act to State and local governments and their related agencies.

States a policy of nondiscrimination on account of age in the Federal government, and authorizes the U.S. Civil Service Commission to enforce that policy.

SEC. 29. *Effective Date.*—Provides that the effective date of the 1974 amendments shall be the first day of the second full month after the date of enactment.

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 37 million nonsupervisory employees at work in September 1973 [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 615,000 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, $2.10 an hour effective January 1, 1975, and $2.30 an hour effective January 1, 1976.

The impact of a $2.00 an hour minimum wage rate would be felt by 3.8 percent of the 37,124,000 employees covered by the Act prior to the effective date of the 1966 amendments; or, by an estimated 1,426,000 employees. These are employees who are now earning less than $2.00 an hour. Only 49,000 of the 615,000 Federal employees covered by the 1966 amendments would feel the impact of a $2.00 an hour minimum wage rate.

The impact of a $2.10 an hour minimum wage rate—effective January 1, 1975—would mean wage increases for an estimated 1,564,000 private sector employees (covered by the Act prior to the effective date of the 1966 amendments) and 51,000 Federal employees (covered by the 1966 amendments) who, at that time, will be earning less than $2.10 an hour.

A $2.30 an hour minimum wage rate—effective January 1, 1976—would mean wage increases for an estimated 2,187,000 private sector and 60,000 Federal employees who, at that time, will be earning less than $2.30 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

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

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 in 1973 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 $1.90 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 CPI for all items in January 1974 was 139.7. 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 January 1974 indices were 153.7 and 142.2, 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.

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

Effective date	Previously covered		Newly covered (nonfarm)		Farmworkers		CPI (1967=100)	Cumulative percent inflation[1] 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
Jan. 1974	1.60	1.12	1.60	1.12	1.30	.91	139.7	42.4

[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 January 1974 would have exceeded $2.23 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 $5,682 annually—an increase of more than 44.7 per cent. A GS–16 level Federal employee in 1966 earned $20,075 annually. Today, he earns $32,806—an increase of 63.4 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 $2.30 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 $2.30 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 1936.

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."

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

With the exception of the 615,000 Federal employees covered, and the 513,000 agricultural employees covered, the bill would increase the minimum wage rate for such employees to $1.90 an hour effective on the first day of the second full month after the date of enactment, $2.00 an hour effective January 1, 1975, $2.20 an hour effective January 1, 1976, and $2.30 an hour effective January 1, 1977. 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 11,175,000 employees covered by the 1966 amendments, a $1.90 an hour minimum wage rate would mean wage increases for an estimated 1,551,000. These are employees who are now earning less than $1.90 an hour.

The impact of a $2.00 an hour minimum wage rate—effective January 1, 1975—would mean wage increases for an estimated 1,689,000 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 January 1, 1976—would mean wage increases for an estimated 2,180,000 employees who, at that time, will be earning less than $2.20 an hour.

And, the impact of a $2.30 an hour minimum wage rate—effective January 1, 1977—would mean wage increases for an estimated 2,180,000 employees who at that time, will be earning less than $2.30 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 513,000 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, $1.80 an hour effective January 1, 1975, $2.00 an hour effective January 1, 1976, $2.20 an hour effective January 1, 1977, and $2.30 an hour effective January 1, 1978.

The bill does not propose an extension of minimum wage coverage to additional agricultural employees, except to the extent presently exempt agricultural employees are included within the scope of the conglomerate provisions of section 18 or by modification of the definition of "employee" provided by section 6. It is interesting to note also, that the 513,000 presently covered agricultural employees are employed on approximately 2 percent of the Nation's farms.

A $1.60 an hour minimum wage rate would mean wage increases for an estimated 90,000 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 January 1, 1975—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 January 1, 1976—would mean wage increases for an estimated 158,000 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 January 1, 1977—would mean wage increases for an estimated 184,000 agricultural employees who, at that time, will be earning less than $2.20 an hour.

And, a $2.30 an hour minimum wage rate—effective January 1, 1978—would mean wage increases for an estimated 184,000 agricultural employees who, at that time, will be earning less than $2.30 an hour.

APPLICATION OF THE MINIMUM WAGE RATE TO EMPLOYEES PROPOSED TO BE COVERED UNDER THE ACT BY THE 1974 AMENDMENTS

The bill would extend the minimum wage protection of the Act to approximately 7 million employees.

TABLE 6.—*Estimated distribution of nonsupervisory employees who would be brought under the minimum wage protection of the Act by H.R. 12435*

Industry:	*Number of employees to be covered by the bill*
Federal, State, and local government	5,079,000
Domestic service	1,285,000
Retail or service establishments	654,000
Agriculture	25,000
Motion picture theaters	59,000
Logging	42,000
Telegraph agencies	(1)
Shade grown tobacco	(1)
Conglomerates	(1)
Total	7,144,000

[1] No estimate available.

For such nonagricultural employees, the bill would require a minimum wage rate of not less than $1.90 an hour effective on the first day of the second full month after the date of enactment, $2.00 an hour effective January 1, 1975, $2.20 an hour effective January 1, 1976, and $2.30 an hour effective January 1, 1977. Discussion of the impact of the minimum wage rate to the limited number of agricultural employees proposed to be covered by the bill was included above.

The $1.90 an hour rate (for the newly covered nonagricultural employees) would mean wage increases for an estimated 1,056,000 such employees. These are employees who are now earning less than $1.90 an hour.

The impact of a $2.00 an hour minimum wage rate—effective January 1, 1975—would mean wage increases for an estimated 1,107,000 employees who, at that time, will be earning less than $2.00 an hour.

A $2.20 an hour minimum wage rate—effective January 1, 1976—would mean wage increases for an estimated 1,217,000 employees who, at that time, will be earning less than $2.20 an hour.

And, the impact of a $2.30 an hour minimum wage rate—effective January 1, 1977—would mean wage increases for an estimated 1,404,000 employees who, at that time, will be earning less than $2.30 an hour.

APPLICATION OF THE OVERTIME COMPENSATION PROVISIONS TO EMPLOYEES PROPOSED TO BE COVERED BY THE 1974 AMENDMENTS

The bill would extend the overtime compensation protection of the Act to approximately 9.5 million employees.

TABLE 7.—*Estimated distribution of nonsupervisory employees who would be brought under the overtime compensation protection of the act by H.R. 12435*

Industry:	*Number of employees to be covered by the bill*
Federal, State, and local government	4,555,000
Domestic service	1,150,000
Retail or service establishments	520,000
Oil pipeline	15,000
Seafood canning and processing	40,000
Transit	35,000
Hotel, motel, and restaurant	1,521,000
Nursing home	742,000
Salesmen, partsmen, and mechanics	11,000
Food service	199,000
Bowling establishments	48,000
Seasonal industries	641,000
Telegraph agencies	(1)
Cotton ginning	22,000
Sugar processing	26,000
Total	9,525,000

[1] No estimate available.

NOTE.—With respect to certain hotel, motel, and restaurant employees, and employees engaged in cotton ginning and sugar processing activities, the bill does not require the payment of overtime compensation for hours worked in excess of 40 during a workweek, but rather, for greater numbers of hours worked during a workweek.

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).

The bill provides for the gradual achievement of minimum wage parity for workers in Puerto Rico and the Virgin Islands with workers on the mainland.

The minimum wage for certain hotel, motel, restaurant and food-service employees, as well as employees of the Federal and Virgin Islands governments, will be the same as the minimum wage for counterpart mainland employees on the effective date.

For other covered workers in Puerto Rico and the Virgin Islands, the bill provides as follows:

(1) Effective on the effective date of the legislation, presently covered employees are to receive the following increases:

(A) an increase of 12 cents an hour if their wage order rates are less than $1.40 an hour; and

(B) an increase of 15 cents an hour if their wage order rates are $1.40 an hour or higher.

(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 not be less than 60 percent of the 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 receive, 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 that employee will then receive the 15 cents annual increase. 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, whichever 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.

The bill also provides 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 bill further provides that a court of appeals may upon review of a wage order specify the minimum wage rate to be included in such wage order.

Provisions permitting the setting of lower rates by industry committee in Puerto Rico and the Virgin Islands were incorporated into the Act in June 1940, almost 34 years ago. However, from the outset a clear intent has been manifest in the Act to achieve ultimate parity. Section 8(a) of the Act sets forth this policy:

> 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.

In the course of various evaluations of the industry committee procedures, questions have been raised as to whether a need still exists for such special industry committee action. The procedure has been criticized as time-consuming, costly and unfair to mainland employers. Opponents of the present procedure have also noted how little progress has been made in raising the wage floor in some industries, despite improved economic conditions, and substantial increases in productivity.

The committee was persuaded to provide for eventual parity for a wide variety of reasons. Consideration was given to the fact that the cost-of-living has been rising almost as rapidly on the Islands as on the mainland. For example, the Consumer Price Index (1967=100) for all items in 1972 was 117.9 in Puerto Rico and 125.3 on the mainland. Moreover, the index of food prices was 122.9 in Puerto Rico as compared with 123.5 on the mainland; the index of transportation prices was 116.6 in Puerto Rico versus 119.9 on the mainland. And for personal care, the Puerto Rican index was 118.6 as compared with 119.8 on the mainland. In addition, profit margins of establishments in Puerto Rico are usually greater than for their national counterparts, and employers enjoy special advantages, such as exemption from Federal income taxes, subsidies, and exemption from local income taxes for a period of from 10 to 17 years, depending on location.

The schedule for achieving parity, as set forth in the bill, makes it possible for employers to make long-range plans for adjusting to the scheduled wage changes. The increase in wage order rates of 12 to 15 cents an hour on the effective date (for most activities) on the Islands is less than the increase in the mainland. It is recognized that many of the employers in Puerto Rico and the Virgin Islands who have been covered by the Act since its inception could adjust to a $0.40 an hour minimum wage increase on the effective date with ease. However, a more modest increase was decided upon to insure that the increases would proceed smoothly and that substandard wages would be eliminated by a predetermined target date.

The committee was impressed by the extensive financial and tax incentives designed to attract business to Puerto Rico. In "A National Profile of Puerto Rico" (March 1971), Ernst and Ernst described in

detail the various benefits to business of locating in Puerto Rico ranging from "100 percent exemption from income tax on industrial development income for qualified firms" to such special location incentives for operations in areas outside of metropolitan San Juan as offsets for costs of training, salaries, rents and mortgages. The Committee compared the advantages designed to attract business to Puerto Rico with wage data in the summary on labor, in Ernst and Ernst. In this summary, the average hourly wage in 1969 for 20 industry groups in Puerto Rico is shown at $1.82. The comparable figure for the mainland is given as $3.10. The committee's intent is to improve the status of the Puerto Rican worker; parity with mainland workers with respect to the minimum wage is a necessary first step.

The committee is aware that industry committees meet throughout a year to recommend increases in relevant wage orders, and further recognizes that such committees are now convened and that others have recently discharged their responsibilities. Acknowledging the inequity involved with mandating across-the-board adjustments in wage orders which have only recently been increased upon recommendation of appropriate industry committees, the committee intends that the Secretary consider such increases in applying the statutory adjustments; that is, that increases recommended within a reasonable time prior to the effective date of the statutory adjustments be compared to the increases required by the bill so that only the greater of the two shall initially apply. For purposes of administration, the committee intends that 3 months be deemed a reasonable time.

FEDERAL, STATE, AND LOCAL GOVERNMENT

Section 6 of the bill extends minimum wage and overtime coverage to about 5 million non-supervisory employees in the public sector not now covered by the Act. Approximately 3.5 million public employees, primarily employees in hospitals, schools, and other institutions, were covered by the 1966 amendments. The bill will provide that virtually all non-supervisory government employees will be covered.

The bill, however, establishes an overtime exemption applicable to public employees "engaged in fire protection or law enforcement activities (including security personnel in correctional institutions)".

In the case of public employees first covered by the 1974 amendments, State and local government employees covered by the 1966 amendments, and Canal Zone employees, the bill would provide a minimum wage rate of not less than $1.90 an hour effective on the first day of the second full month after the date of enactment, $2.00 an hour effective January 1, 1975, $2.20 an hour effective January 1, 1976, and $2.30 an hour effective January 1, 1977. The minimum wage rates applicable to Federal employees covered by the 1966 amendments were discussed earlier.

The impact of a $2.30 an hour minimum wage rate on all such employees is illustrated elsewhere, but it is significant to note here that there would be no impact with respect to newly covered Federal employees.

Coverage of Federal employees is extended by the bill to most employees including wage board employees, non-appropriated fund

employees, employees in the Canal Zone who are engaged in employment of the kind described in sections 5102(c)(7) of title 5, U.S.C., and any other civilian employees working for the armed services. Excluded from coverage are military personnel. Basically, the committee did not intend to extend coverage to those persons for whom the tangible benefits of government employment are of secondary significance, for example Peace Corps and VISTA volunteers. By the same token, the committee intends to cover all employees (except professional, executive, and administrative personnel who are exempted under section 13 of the law) in all civilian branches of the Federal Government.

The Secretary of Labor in 1973, reflected the Civil Service Commission's view when he recommended against bringing Federal employees under the coverage of the Fair Labor Standards Act. The Commission's position was that Federal employees are already covered by special pay provisions in title 5, United States Code, and that enactment of this legislation would confuse the administration of these provisions and could raise jurisdictional problems of administration.

The committee resolved this matter by including Federal employees within the coverage of the Act and charging the Civil Service Commission with responsibility for administration of the Act so far as Federal employees (other than employees of the Postal Service, the Postal Rate Commission or the Library of Congress) are concerned. It is the intent of the committee that the Commission will administer the provisions of the law in such a manner as to assure consistency with the meaning, scope, and application established by the rulings, regulations, interpretations, and opinions of the Secretary of Labor which are applicable in other sectors of the economy. The provisions of the bill would leave the premium pay provisions of title 5, United States Code, in effect to the extent that they are not inconsistent with the Fair Labor Standards Act.

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 95,000 of the State and local government employees to be covered by the bill would be benefited by the impact of a $1.90 an hour minimum wage rate; 104,000 would be benefited by the impact of a $2.00 an hour minimum wage rate effective

January 1, 1975; 138,000 would be benefited by the impact of a $2.20 an hour minimum wage rate effective January 1, 1976; and 138,000 of that group would be benefited by the impact of a $2.30 an hour minimum wage rate effective January 1, 1977.

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.

RETAIL TRADE AND SERVICES (EXCEPT DOMESTIC SERVICE)

The bill would extend the minimum wage and overtime provisions of the Act to employees of individual retail and service establishments (except "Mom and Pop" stores) which are part of enterprises with gross annual receipts of $250,000 or more. Under existing law, individual establishments which have annual receipts less than $250,000 are exempt even if they are part of a chain which has annual receipts over $250,000.

Currently, the Act protects about 14.2 million nonsupervisory workers in retail trades and services. The committee bill would increase coverage in these activities by 713,000 workers, exclusive of domestic service employees.

The bill phases out by July 1, 1976, the $250,000 establishment test for smaller stores of large covered chains. Currently, two stores of the same chain are treated differently under the Act. For example, if a multi-million dollar chain has 10 stores, 9 of which have annual sales in excess of $250,000 and one has receipts of less than $250,000, the Act currently applies to employees of the 9 stores, but not to the employees of the smaller store of the same chain. Employees in the 9 stores are currently guaranteed the protection of the Act, but the employees of the 10th store have no such protection. This inequity

would be rectified if all establishments of a covered chain were treated equally under the law.

The bill would not directly affect franchised or independently owned small (less than $250,000 annual receipts) retail and service firms nor would it extend coverage to the so-called "Mom & Pop" stores.

This bill would not only protect many of the retail and service employees who were not benefited by the 1964 and 1966 amendments to the Act, but it would also protect medium size shopkeepers, who are covered by the law, from being undercut by retail or service establishments which may be part of multimillion dollar enterprises, yet are exempt from the Act and pay subminimum wages.

Once again the committee looked to special reports of the Department of Labor which were designed to determine how employers adjusted to the extensions of coverage to retail and service activities in 1961 and 1966. Repeatedly these reports stated that employment increased in activities newly covered by the Act. For example, the Department's nation-wide survey of restaurant employees shows that employment increased by 3,900 workers between October 1966 and April 1967, the period spanning the effective date of the initial phase of the 1966 amendments to the minimum wage law. The Labor Department reported that the "largest employment increase occurred in the South where the wage impact was greatest." It is apparent from the various reports that the retail and service industry has adjusted to the Act's coverage with relative ease.

TRANSIT EMPLOYEES

Section 21 of the bill repeals 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 40 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.

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 70% of the employees organized. A review of the relevant collective bargaining agreements discloses that 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.

SEASONAL INDUSTRY EMPLOYEES

Section 19 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 5 years old by the time the 1974 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 7(a) of the bill contains the following Congressional finding:

> That Congress further finds that the employment of persons in domestic service in households affects commerce.

Subsection (b) provides a minimum wage rate for such employees of not less than $1.90 an hour effective on the first day of the second full month after the date of enactment, $2.00 an hour effective January 1, 1975, $2.20 an hour effective January 1, 1976, and $2.30 an hour effective January 1, 1977. These rates would be applicable to a domestic service employee who in any workweek is employed in domestic service for more than 8 hours in the aggregate in one or more households. 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, babysitters employed on a casual basis and employees employed in the capacity of companion to an individual who, by reason of older age or infirmity, necessitates a companion. The bill also exempts from the overtime requirements, domestic service employees who reside in the household of their employment.

The bill would extend coverage to an estimated 1,285,000 employees employed in domestic service, out of a total of about 2 million such employees. Approximately 935,000 of those proposed to be covered currently earn less than $1.90 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 minimum 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 opinior, 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.

The term "domestic service" employees is not defined in the Act. However, the generally accepted meaning of domestic service relates to services of a household nature performed by an employee in or about a private home of the person by whom he or she is employed. The domestic service must be performed in a private home which is a fixed place of abode of the individual or family. A separate and distinct dwelling maintained by the individual or family in an apartment house or hotel may constitute a private home. However, a dwelling house used primarily as a boarding or lodging house for the purpose of supplying such services to the public, as a business enterprise, is not a private home.

Generally, domestic service in and about a private home includes services performed by persons employed as cooks, butlers, valets, maids, housekeepers, governesses, janitors, laundresses, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles

for family use. The regulations issued under the Social Security Act also include babysitters. See § 51.3121(a)(7)–1(a)(2).

It is the intent of the committee to include within the coverage of the Act all employees whose vocation is domestic service. However, the exemption reflects the intent of the committee 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. People who will be employed in the excluded categories are not regular bread-winners or responsible for their families' support. The fact that persons 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.

In cases in which the domestic service employee resides on the employer's premises, the specific provision of the Secretary's interpretative bulletin relating to hours worked by such an employee would be applicable (see 29 CFR 785.23). Ordinarily such an employee engages in normal private pursuits such as eating, sleeping, and entertaining, and has other periods of complete freedom. In such a case it would be difficult to determine the exact hours worked. Accordingly, any reasonable agreement of the parties which takes into consideration all of the pertinent facts will be accepted as a proper basis for determining hours worked. This rule has been applied by the courts in analogous cases. See, e.g., *Skelly Oil Co.* v. *Jackson*, 194 Okla. 183, 148 P.2d 182 (Okla. Sup. Ct. 1944).

The committee is confident that appropriate methods to ensure compliance can be fashioned within the authority of the Secretary of Labor under the Act. The committee calls attention, for example, to the provisions of the law and the Secretary of Labor's regulations which credit the employer with the reasonable value of board and lodging furnished to an employee. These provisions, coupled with the provision for an overtime exemption for live-in domestics, as provided in the bill, will serve to minimize any problems which might arise in the application of the law.

The Youth Employment Project

The committee previously considered and rejected the idea that the Fair Labor Standards Act should incorporate a new special subminimum wage rate for non-school youth. The rejection was based not only on the majority belief that this would violate the basic objective of the Act, but also that such a standard would contribute to rather than ease the critical problem of unemployment, including unemployment of youths and minority groups.

But the committee does not object to the development and implementation of a limited pilot project in employing establishments in which wages lower than the minimum wage rate applicable under section 6 of the Act are permitted to determine the effects of such lower wages on the employment patterns of young and adult workers.

As an example of a project established administratively, the committee notes with interest the Work Experience and Career Explora-

tion Program (WECEP), presumably designed for school dropout-prone 14- and 15-year old youth. The Department of Labor in 1969, pursuant to a presumption of some authority under the student-learner provisions of section 14(a) of existing law, created WECEP. Since its inception, it has grown to approximately 17,700 students working part-time under its scope.

The committee is aware that many of these students are being paid at a wage rate less than the otherwise applicable minimum wage rate under certificates issued by the Secretary. The committee is also advised that about 50 percent of the student-learners employed in non-public employment under certificates issued by the Secretary, were employed in food related industries; and specifically, in occupations which seem to require virtually no degree of skill. The committee intends to invesigate WECEP under its oversight authority, but expects the Secretary to immediately report on all aspects of WECEP, including the statutory authority for its existence.

Given recognition of the increasing establishment of such programs as WECEP in the absence of a clear Congressional mandate, the committee expects that the Secretary will establish this limited pilot project for the employment of youth within the parameter of the qualifications set forth below.

The committee intends that the qualifications which follow be strictly applied to this pilot project:

(1) The number of employing establishments participating in such project cannot exceed eight (8) at any given time and shall, to the extent feasible, be geographically distributed so as to fairly represent all regions of the United States;

(2) The Secretary shall designate such establishments, with due regard for avoiding the creation of unfair labor cost advantages and impairing or depressing wage or working standards established for experienced workers for work of a like or comparable character in the industry;

(3) The maximum number of workers which any employer may be authorized by the Secretary to employ by a special certificate issued under this pilot project shall not exceed the lesser of five percent of the total number of workers in such establishment, or 100;

(4) The special minimum rates of such workers shall be not less than 80 percent of the otherwise applicable minimum wage rate prescribed by section 6 of the Act;

(5) The project shall be administered consistent with all purposes and provisions of the Act;

(6) The issuance of any such certificate shall be necessary in order to prevent curtailment of opportunities for employment;

(7) The issuance of any such certificate shall not create a substantial probability of reducing the full-time employment opportunities for other workers;

(8) The employment for which such certificates are issued shall provide a responsible work experience;

(9) The Secretary shall not designate or continue designation as a participant in this project, any employer who has violated any provision of the Act which has not been remedied or which provides reasonable grounds to conclude that the terms and qualifications of the project may not be complied with, nor any employing establish-

ment where abnormal labor conditions such as a strike, lock-out, or other similar condition exists; and

(10) This pilot project shall be designed so as to reasonably assure that all such workers will continue in the employment of the employer after the termination of such project, at a rate equal to or in excess of the minimum wage rate prescribed by section 6 of the Act, and the Secretary is expected to obtain in writing satisfactory assurances from each such employer to that effect.

In order that the Congress may benefit from the knowledge derived from this project, the committee intends that the project conclude by December 31, 1976, and that the Secretary draw conclusions therefrom and make a final report to the Congress not earlier than March 1, 1977, but not later than July 1, 1977. The Secretary may include with his report recommendations, if any, with respect to appropriate legislative action. The committee also intends that the Secretary provide it with data and information with respect to the project on a periodic basis prior to the submission of his final report.

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 somewhat expand the scope of section 14 of the Act. 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.

Up to four students may be hired without the traditional pre-certification procedure (that is, a prior finding of no substantial probability of job displacement before issuance of certificates). Employment of five or more students requires such pre-certification. However, regardless of the number of students to be hired, the bill deletes the historical experience test concerning the proportion of student hours worked during a base year.

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.

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.

The bill also provides for the employment by institutions of higher education of full-time students enrolled in such institutions at the student rate, without regard to the certification requirements, and authorizes the Secretary to undertake safeguards to assure this provision is not abused. The bill 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 educational program provided by the school.

HOTELS, MOTELS, AND RESTAURANTS

The bill eliminates the complete overtime exemption for employees employed by hotels, motels, and restaurants and substitutes a limited overtime exemption as follows:

During the first year of coverage, overtime compensation will be required for hours of employment in excess of 48 per week, and after the first year, such compensation will be required for hours of employment in excess of 46 per week. For maids and custodial employees

of hotels and motels, the continued phaseout is as follows: 44 hours in the third year, and 40 hours per week thereafter.

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 include housemen and gardeners. 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. It would include employees engaged in laundering, cleaning, or repairing clothing or fabrics. 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.

NONDISCRIMINATION ON ACCOUNT OF AGE IN GOVERNMENT EMPLOYMENT

The bill amends 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 Administration has also proposed such an extension of coverage for State and local government employees. The amendment is a logical extension of the committee's decision to extend FLSA coverage to Federal, State, and local government employees.

The ADEA 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.

As the President said in his message of March 23, 1972, supporting such an extension of coverage under the ADEA, "Discrimination based on age—what some people call 'age-ism'—can be as great an evil in our society as discrimination based on race or religion or any other characteristic which ignores a person's unique status as an individual and treats him or her as a member of some arbitrarily-defined group. Especially in the employment field, discrimination based on age is cruel and self-defeating; it destroys the spirit of those who want to work and it denies the National the contribution they could make if they were working."

The committee was impressed by a press release issued by then Secretary of Labor Hodgson on February 4, 1972 which was headed: "Voluntary Compliance with Age Discrimination Laws Opens Up 1 Million Jobs, Secretary of Labor Tells Congress". The release states that informal talks with some 30,000 employers dispelled "preconceived notions or myths" about the older worker.

The committee expects that expanded coverage under the Age Discrimination in Employment law will remove discriminatory barriers

against employment of older workers in government jobs at the Federal and local government levels as it has and continues to do in private employment.

RECOVERY OF BACK WAGES

Section 26 of the committee bill amends section 16(c) of the Act to authorize the Secretary of Labor not only to bring suit to recover unpaid minimum wages or overtime compensation, a right which the Secretary currently has, but also to sue for an equal amount of liquidated damages without requiring a written request from an employee. However, the committee intends that liquidated damages when recovered by the Secretary, are recovered in behalf of and for the benefit of the employee. Further, the committee intends that the good faith defense provisions of Section 11 of the Portal-to-Portal Act of 1947 are not in any way diminished and are applicable to claims by the Secretary for liquidated damages.

The committee also acted on an amendment to Section 16(b) of the Act to make clear the right of individuals employed by state and local governments and political subdivisions to bring private actions to enforce their rights and recover back wages under this Act. This amendment is necessitated by the decision of the U.S. Supreme Court in *Missouri, et al.* (April, 1973) which held that Congress in extending coverage under the 1966 amendments to school and hospital employees in state and local governments did not explicitly provide the individual a right of action in the Federal courts although the Secretary of Labor was authorized to bring such suits. In addition the committee included an amendment to the Portal-to-Portal Act of 1947 which would preserve existing actions brought by private individuals which would otherwise be barred by the statute of limitations as a result of the April decision.

Both amendments were included at the request and recommendation of the Administration and the Secretary of Labor.

TOBACCO EMPLOYEES

Section 9 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 19 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 1974. The cost estimate for fiscal year 1974 is $250,000.

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.

Section-by-Section Description of the Bill as Reported

The following is a description of H.R. 12435 as reported by the Committee and of the changes made in the Fair Labor Standards Act of 1938 (referred to in the description as the "Act") by sections 2 through 27 of the bill and the changes made by section 28 to the Age Discrimination in Employment Act of 1967:

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 1974". Subsection (b) is a technical provision.

Section 2. 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 employees covered by the Act prior to the effective date of the 1966 amendments and for Federal employees covered by the 1966 amendments (wage board employees and employees of nonappropriated fund instrumentalities of the Armed Forces). 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 during the period ending December 31, 1974, (2) not less than $2.10 an hour during the year beginning January 1, 1975, and (3) not less than $2.30 an hour beginning January 1, 1976.

Section 3. 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 amendments to the Act and for employees covered by the 1974 amendments. The minimum wage rate for such employees is raised from not less than $1.60 an hour to (1) not less than $1.90 an hour during the period ending December 31, 1974, (2) not less than $2 an hour during the year beginning January 1, 1975, (3) not less than $2.20 an hour during the year beginning January 1, 1976, and (4) not less than $2.30 an hour beginning January 1, 1977.

Section 4. 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 during the period ending December 31, 1974, (2) not less than $1.80 an hour during the year beginning January 1, 1975, (3) not less than $2 an hour during the year beginning January 1, 1976, (4) not less than $2.20 an hour beginning January 1, 1977, and (5) not less than $2.30 an hour during the year beginning January 1, 1978.

Section 5. Increase in Minimum Wage Rate for Employees In Puerto Rico and the Virgin Islands.—

(A) Government, Hotel, Motel, Restaurant, and Food Service Employees.—Subsection (a) of this section amends section 5 of the Act to provide that the minimum wage rate for hotel, motel, restaurant,

food service, and Government of the United States and the Virgin Islands employees in Puerto Rico and the Virgin Islands shall be determined as if such employees were employed in one of the 50 States. Thus, the wage rate for such employees will not be determined through the wage order process provided in section 6(c) of the Act.

(*B*) *Other Employees in Puerto Rico and the Virgin Islands.*—Subsection (b) of this section amends section 6(c) of the Act to increase the minimum wage rate for employees in Puerto Rico and the Virgin Islands who are subject to the wage orders issued under the Act. The amended section 6(c) (2) of the Act provides an initial increase (effective on the first day of the second full month beginning after the date of the enactment of the bill) in the wage order rates of employees covered by the Act before the 1974 amendments. The *initial increase* is $0.12 an hour for wage order rates which are presently under $1.40 an hour and $0.15 an hour for wage order rates which are presently $1.40 or more an hour; except that if the prescribed initial increase will yield a wage order rate less than a rate equal to the higher of 60 percent of the otherwise applicable rate under the Act or $1 an hour, the initial increase shall be adjusted to yield the higher rate. Beginning a year after the initial increase, *additional annual increases* are authorized until the wage rate is equal to the otherwise applicable rate under section 6(a) or 6(b) or would be greater than such rate if the increase were made. The additional increase shall be $0.12 an hour for wage order rates under $1.40 and $0.15 for wage order rates of $1.40 or more. In the case of an agricultural employee whose hourly wage is increased (above that required by wage order) by a subsidy paid by the Government of Puerto Rico, the increases (initial and additional annual) authorized by section 6(c)(2) shall be applied to the sum of (1) the wage order rate, and (2) the amount of the subsidy. When the wage rate of an employee is equal to the otherwise applicable rate under section 6(a) or 6(b) or would be greater if the authorized increase were made, section 6(c) shall be inapplicable to such employee and his minimum wage rate shall be determined under section 6(a) or 6(b), as the case may be.

The amended section 6(c)(3) of the Act provides for the establishment of special industry committees to recommend minimum wage rates for employees newly covered by the 1974 amendments (including employees of the Government of Puerto Rico and its political subdivisions). The recommended rates cannot be less than 60 percent of the otherwise applicable rate under section 6(b) or $1 an hour, whichever is higher. With the exception of employees of the government of Puerto Rico or any political subdivision thereof, the wage rate of an employee which is established under the amended section 6(c)(3) will be annually increased as provided in the amended section 6(c)(2).

Section 8 is amended to require that special industry committees, established to recommend wage order rates, recommend the minimum wage rate that would be applicable under section 6(a) or 6(b) unless there is substantial documentary evidence (including pertinent financial or other appropriate information) that establishes an inability to pay that rate. Section 10 is amended to authorize a United States court of appeals, upon review of a wage order issued under section 8, to specify the minimum wage rate to be included in the wage order.

Section 6. Federal and State Employees.—Through a series of amendments to the definitions in section 3 of the Act the minimum wage

and overtime provisions of the Act are extended to the following public employees not covered by the 1966 amendments: (1) Employees of the Government of the United States (who are employed as civilians in the military departments, or are employed in an Executive department, Government corporation, independent establishment, unit of the legislative or judicial branch which has positions in the competitive service, or the Library of Congress); (2) employees of the United States Postal Service or the Postal Rate Commission; and (3) employees of States, political subdivisions of States, and interstate governmental agencies (other than employees not under local civil service laws who hold elective office or are on the personal staff of such an office holder, are immediate advisers to him, or are appointed by him to serve on a policy making level). The Civil Service Commission will administer the application of the Act to the employees described in clause (1), except that the Librarian of Congress may be authorized by the Secretary to administer it with respect to employees under him.

Section 13(b) of the Act is amended to provide an exemption from overtime for employees of the United States, States and political subdivisions who are engaged in fire protectoin or law enforcement activities (including employees who are security personnel in correctional institutions).

Section 16(b) of the Act is amended to make it clear that suits by public employees to recover unpaid wages and liquidated damages under such section may be maintained in a Federal or State court of competent jurisdiction. This amendment is intended to overcome that part of the decision of the Supreme Court in *Employees of the Department of Public Health v. Missouri* (93 S. Ct. 1614, April 18, 1973) which stated that Congress had not explicitly provided in enacting the 1966 amendments that newly covered State and local employees could bring an action against their employer in a Federal court under section 16. An amendment to the Portal-to-Portal Pay Act of 1947 extends for six months after the enactment of the bill the statute of limitations applicable to suits under section 16(b) to permit State and local public employees who were denied recovery under section 16(b) in suits brought in Federal courts before April 18, 1973, on grounds that the Congress had not made it clear that State public employees could bring suit in a Federal court under section 16(b).

Section 7. Domestic Workers.—Subsection (a) amends section 2 of the Act to add a finding of Congress that the employment of persons in domestic service in households affects commerce.

Subsection (b) of this section amends section 6 of the Act to provide minimum wage coverage at the section 6(b) rate (rate for employees first covered in 1966 and 1974) for employees for domestic service employment in one or more households in workweeks in which the aggregate number of hours of such employment exceeds 8. The requirements for coverage in any workweek are (1) that the employee be employed in domestic service in one or more households, and (2) the aggregate number of hours of such employment must exceed 8. An employee need not be employed in *one* household for more than 8 hours in a workweek to be covered under the section 6(b) rate. The test is the aggregate number of hours employed in household domestic service in a workweek, not the number of hours employed in a particular household. Subsection (c) amends section 7 of the Act to provide that if an employer employs an employee in domestic service in one

or more households for more than forty hours in any workweek, such employer shall be required to pay that employee in accordance with the overtime provisions of section 7(a).

Two exemptions for domestic workers are provided. First, under an amendment to section 13(a), sections 6 and 7 will not apply to employees who are employed on a casual basis to provide babysitting services or to employees employed in domestic service to provide companionship services for persons unable to care for themselves. Second, under an amendment to section 13(b), section 7 (overtime) will not apply to an individual who is employed in domestic service in a household and who resides in such household.

Section 8. Retail and Service Establishments.—This section amends section 13(a)(2) which provides an exemption from sections 6 and 7 for employees of certain retail or service establishments with more than 50 percent intrastate business. If an establishment is within a section 3(s) enterprise its employees are presently exempt if the establishment has an annual dollar volume of sales of less than $250,000. Effective July 1, 1974, the annual dollar volume test is reduced to $225,000, effective July 1, 1975, it is reduced to $200,000, and effective July 1, 1976, it is repealed thus excluding from the exemption any retail or service establishment within a section 3(s) enterprise.

Section 9. Tobacco Employees.—Under the amendments made by section 19 to section 7(c) of the Act tobacco employees will—in steps—no longer be exempt from section 7(a). Subsection (a) of this section amends section 7 to retain a limited overtime exemption for employees engaged in activities related to the sale of tobacco. For a period or periods not to exceed 14 workweeks in the aggregate in any calendar year overtime compensation must be paid only for employment in excess of 10 hours in any workday and 48 hours in any workweek.

Subsection (b) of this section amends section 13 of the Act to repeal the present minimum wage exemption for employees engaged in the processing of shade-grown tobacco but retains the overtime exemption for such employees.

Section 10. Telegraph Agency Employees.—This section amends section 13(a)(11) to repeal the minimum wage exemption for employees of small telegraph agencies (an agency which is a section 13(a)(2) exempt retail or service establishment and which has message revenues of not more than $500 a month), and amends section 13(b) to reduce and ultimately repeal the overtime exemption for such employees. During the first year after the effective date of the 1974 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 of 40 per week.

Section 11. Seafood Canning and Processing Employees.—This section amends section 13(b)(4) of the Act to reduce and ultimately repeal the overtime exemption for employees engaged in the processing and canning of seafood. During the first year after the effective date of the 1974 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 of 40 per week.

Section 12. Nursing Home Employees.—This section amends section 13(b)(8) to repeal the limited overtime exemption (overtime required for hours employed beyond 48 in any workweek) applicable to nursing home employees and to provide in section 7 an overtime exemption for such employees identical to that applicable to hospital employees. The exemption would be pursuant to an employer-employee agreement and provides an overtime exemption for employment up to 8 hours in any workday and up to 80 hours in any 14-day consecutive work period.

Section 13. Hotel, Motel, and Restaurant Employees and Tipped Employees.—This section amends section 13(b)(8) of the Act to reduce the overtime exemption for hotel, motel, and restaurant employees and to ultimately repeal the overtime exemption for employees of hotels and motels who perform maid or custodial services. During the first year after the effective date of the 1974 amendments, overtime compensation must be paid to all hotel, motel, and restaurant employees for hours worked in excess of 48 per week. During the next year and each year thereafter such employees (other than hotel or motel maids or custodians) shall be paid overtime compensation for hours worked in excess of 46 per week. In the case of hotel or motel maids or custodians, overtime compensation is required, during the second year from such effective date, for hours worked in excess of 46 per week; during the third year from such date, for hours worked in excess of 44 per week; and thereafter, for hours worked in excess of 40 per week.

Section 3(m) of the Act is amended to provide that with respect to tipped employees the tip credit provision of the Act (employer receives credit against his minimum wage obligation to a tipped employee in an amount not to exceed 50 percent of applicable minimum wage rate) is not to 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 the tipped employee (either individually or through a pooling arrangement).

Section 14. Salesmen, Partsmen, and Mechanics.—This section amends section 13(b)(10) of the Act to repeal certain overtime exemptions and to add an overtime exemption. The overtime exemption for partsmen and mechanics in nonmanufacturing establishments primarily engaged in the business of selling aircraft and trailers is repealed and an overtime exemption is provided for salesmen in nonmanufacturing establishments primarily engaged in selling boats. Consequently, under section 13(b)(10) salesmen in nonmanufacturing establishments primarily engaged in selling aircraft, automobiles, trucks, trailers, farm implements, and boats will receive an overtime exemption, and partsmen and mechanics in nonmanufacturing establishment primarily engaged in selling automobiles, trucks, or farm implements will receive such an exemption.

Section 15. Food Service Establishments.—This section amends section 13(b)(18) to reduce and ultimately repeal the overtime exemption for employees of food service establishments. During the first year after the effective date of the 1974 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 of 40 per week.

Section 16. Bowling Establishment Employees.—This section amends section 13(b)(19) to reduce and ultimately repeal the overtime exemption for employees employed in bowling establishments. Beginning 1 year after the effective date of the 1974 amendments, such employees must be paid overtime compensation for hours worked in excess of 44 per week, and beginning 2 years after the effective date, for hours worked in excess of 40 per week.

Section 17. Substitute Parents for Institutionalized Children.—This section amends section 13(b) to provide an overtime exemption for couples who serve as houseparents of children who are institutionalized in a nonprofit educational institution by reason of being orphaned or having one deceased parent. To be covered by such exemption such employed couples must receive cash wages of not less than $10,000 annually, and reside on the premises of the institution and receive their board and lodging without cost.

Section 18. Employees of Conglomerates.—This section amends section 13 to provide that the exemption in section 13(a)(6) (agricultural employees) will not apply to employees of establishments within a conglomerate which has an annual gross volume of business of more than $10 million; and to provide that the exemption in section 13(a)(2) (certain intrastate retail or service establishments) will not apply to employees of such establishments beginning July 1, 1976. Such exemption will also not apply to employees of such establishments beginning on the effective date of the 1974 amendments unless during the period beginning on the effective date of the 1974 amendments and ending June 30, 1974, the establishment in which such employee is employed had an annual gross volume of sales of less than $250,000; during the year beginning July 1, 1975, it had an annual gross volume of sales of less than $225,000; or during the year beginning July 1, 1975, the establishment had an annual gross volume of sales of less than $200,000. A conglomerate is an arrangement between two or more establishments under which one establishment 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 other establishment.

Section 19. Seasonal Industry Employees.—This section amends sections 7(c) and 7(d) to reduce and ultimately repeal 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 employment in seasonal industries is reduced to 48 hours in any workweek for not more than 7 workweeks beginning January 1, 1974, for not more than 5 workweeks beginning January 1, 1975, and for not more than 3 workweeks during the year

beginning January 1, 1976. The overtime exemption for employment in agricultural processing is reduced to not more than 7 workweeks beginning January 1, 1974, not more than 5 workweeks beginning January 1, 1975, and not more than 3 workweeks during the year beginning January 1, 1976. 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 calendar year 1974, to 7 workweeks during calendar year 1975, and to 5 workweeks during calendar year 1976. Effective December 31, 1976, the overtime exemptions are repealed.

Section 20. Cotton Ginning and Sugar Processing Employees.—This section amends section 13(b) to limit the existing overtime exemption applicable to certain cotton ginning employees and to employees engaged in the processing of sugar beets, sugar beet molasses, or sugar cane into sugar (other than refined sugar) or syrup. Under the new sections 13(b)(25) and 13(b)(26) overtime compensation will be required for such employees during the workweeks listed in the first column of the following table for employment over the hours specified in the second column of such table:

Annual workweeks	Hours of work permitted during each such workweek without payment of overtime compensation		
	1974	1975	1976 and thereafter
6 weeks	72	66	60
4 weeks	64	60	56
2 weeks	54	50	48
2 weeks		46	44
Workweeks in balance of year	48	44	40

Section 21. Local Transit Employees.—Subsection (a) of this section amends section 7 of the Act to provide that in determining the hours of employment 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, 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.

Subsection (b) of this section amends section 13(b)(7) of the Act to reduce and ultimately repeal 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. During the first year after the effective date of the 1974 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 of 40 per week.

Section 22. Cotton and Sugar Services Employees.—This section amends section 13 to retain for certain cotton and sugar employees a limited overtime exemption. The employees included under this exemption are employees employed exclusively to provide services necessary and incidental to (1) cotton ginning in a cotton ginning

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establishment, (2) the receiving, handling, and storing of raw cotton and the compressing of raw cotton at a cotton warehouse facility or compress-warehouse facility, (3) the receiving, handling, storing, and processing of cottonseed in an establishment primarily engaged in such activity, or (4) the processing of sugar cane or sugar beets in an establishment primarily engaged in such activity. These employees are presently exempt for a limited period from overtime under section 7(d) which is repealed by section 19. Under the exemption provided by this section in a new section 13(h) of the Act, for a period or periods not to exceed 14 workweeks in the aggregate in any calendar year, overtime compensation must be paid such employees only for employment in excess of 10 hours in any workday and 48 hours in any workweek. An employee who receives an exemption under the new section 13(h) may not receive any other exemption under section 7 or 13.

Section 23. Other Exemptions.—Subsection (a) of this section amends section 13 of the Act to repeal the minimum wage exemption for employees of *motion picture theaters* and to retain their overtime exemption.

Subsection (b) of this section amends section 13 of the Act to repeal the minimum wage exemption for *small logging crews* (crews with not more than eight employees) and to retain their overtime exemption.

Subsection (c) amends section 13(b)(2) to repeal the overtime exemption for employees of *oil transportation companies.*

Section 24. Employment of Students.—This section amends section 14 of the Act to revise the provisions respecting the employment of students in retail or service establishments and in agriculture at less than the applicable minimum wage and to provide new authority for employment of students by educational institutions at less than the applicable minimum wage. The amended section 14(b) of the Act 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 retail and service establishments, agriculture, and institutions of higher education at which such students are enrolled. Students may be employed at a wage rate of not less than 85 percent of the applicable minimum wage rate or $1.60 an hour ($1.30 an hour in agriculture), whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands, not less than 85 percent of the otherwise applicable rate under section 6(c) 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 of other workers. The certification requirements are not applicable to the employment of full-time students by an educational institution at which they are en-

rolled unless the Secretary determines it is violating the other requirements of the section in its employment of students.

Sections 15 (prohibited acts) and 16 (penalties) of the Act will be applicable to an employer who violates 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.

This section also amends section 14 of the Act to provide 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 and is in accordance with applicable child labor laws.

Section 25. Child Labor.—Subsection (a) of this section amends section 12 of the Act to authorize the Secretary to require by regulation that employers obtain from employees proof of their age.

Subsection (b) amends section 13(c) of the Act to revise the application of the child labor prohibitions of section 12 to employment in agriculture. Presently, such prohibitions do 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. Under the amended section 13(c) of the Act the child labor prohibitions of section 12 will not apply to employment in agriculture of an employee who is employed outside of school hours for the school district where he is living while he is so employed and—

(1) if under 12, who is employed on a farm owned or operated by his parents or guardian or with the consent of his parents or guardian on a farm whose employees are exempt from the minimum wage provisions of the Act;

(2) if 12 or 13, who is employed with the consent of his parents or guardian or on the same farm with his parents or guardian, or

(3) who is 14 or older.

Subsection (c) of this section amends section 16 of the Act to authorize the imposition of a civil penalty on any person who violates the child labor prohibitions of section 12 (or regulations thereunder). The Secretary is to determine the amount of the penalty and his determination is final unless exception is taken to the determination within 15 days of notice thereof. If exception is so taken the amount shall be determined in an adjudicatory proceeding under section 554 of title 5 of the United States Code. In determining the amount of the penalty the amount of the penalty shall be weighed against the size of business of the violator and the gravity of the violation.

Section 26. Suits by Secretary for Back Wages.—This section amends section 16(c) of the Act (relating to suits by the Secretary). Under the amendment the Secretary is not required to secure the consent of an employee with respect to whom a violation of section 6 or 7 occurred before bringing an action under section 16(c) for the unpaid wages due the employee plus an equal amount as liquidated damages. In addition, the Secretary may bring such an action even though it may involve issues of law not finally settled by the courts. If the Secretary brings such an action, the right of such employee to bring an action on his own behalf under section 16(b) of the Act is terminated unless the action brought by the Secretary under section 16(c) of the Act is dismissed without prejudice on motion of the Secretary.

Section 27. Economic Effects Study.—This section amends section 4 of the Act to require the Secretary to conduct studies on the justification or lack thereof for each of the exemptions provided by sections 13(a) and 13(b) of the Act. Such studies shall include an examination of the extent to which employees of conglomerates receive the sections 13(a) and (b) exemptions and the economic effect of their inclusion in such exemptions. The report on the study is due not later than January 1, 1976.

Section 28. Nondiscrimination on Account of Age in Government Employment.—This section amends the Age Discrimination in Employment Act of 1967. The amendments to the Act (1) change the number of employees an employer is required to have to be subject to the Act from 25 employees to 20 employees for each working day in each of 20 or more calendar weeks in a year; and (2) expand the coverage of the Act to Federal, State, and local employees. The 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.

Section 29. Effective Date.—The amendments made by the Act, except as otherwise specifically provided in the provision making the amendments, shall take effect on the first day of the second full month which begins after the date of the enactment of the bill.

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, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

FAIR LABOR STANDARDS ACT OF 1938

As Amended on the Effective Date of the Fair Labor Standards Amendments of 1974

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) interfers with the orderly and fair marketing of goods in commerce. *The Congress further finds that the employment of persons in domestic service in households affects 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] *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.

[(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.]

(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.

(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, fur-bearing 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,] *other activity, or branch or group thereof,* 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 manner 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.] *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 employee 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.*

(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 a public agency,

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] *or employees handling, selling, or otherwise working on goods or materials* 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, and 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 a public agency.

Any establishment which has as its only regular employees the owner thereof or the parent, spouce, 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. *The employees of an enterprise which is a public agency shall for purposes of this subsecton 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.*

(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.

(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.

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) (*1*) 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 *and overtime coverage* 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).*

(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.

(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.

(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. Notwith-

standing 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.

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 production 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, 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 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 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1966 and not less than $1.60 an hour thereafter, except as otherwise provided in this section;]

(1) not less than $2 an hour during the period ending December 31, 1974, not less than $2.10 an hour during the year beginning January 1, 1975, and not less than $2.30 an hour after December 31, 1975, 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 employees 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 December 31, 1974,

(B) $1.80 an hour during the year beginning January 1, 1975,

(C) $2 an hour during the year beginning January 1, 1976,

(D) $2.20 an hour during the year beginning January 1, 1977, and

(E) $2.30 an hour after December 31, 1977.

(b) 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, *title IX of the Education Amendments of 1972, or the Fair Labor Standards Amendments of 1974*, 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.]

(1) not less than $1.90 an hour during the period ending December 31, 1974,

(2) not less than $2 an hour during the year beginning January 1, 1975,

(3) not less than $2.20 an hour during the year beginning January 1, 1976, and

(4) not less than $2.30 an hour after December 31, 1976.

(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) 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 1974 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 1974, 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.

(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 1974, the Secretary shall, as soon as practicable after the date of enactment of the Fair Labor Standards Amendments of 1974, 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 1974, 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) Notwithstanding 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.

(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 or 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 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 not less than the rates provided for in subsection (b) of this section.

(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—

(1) is employed in domestic service in one or more households, and

(2) is so employed for more than eight hours in the aggregate, shall be paid wages for such employment in such workweek at a rate not less than the wage rate in effect under section 6(b).

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 workweek 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 hours in any workday, or for employment by such employer in excess of [fifty hours] *forty-eight* 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 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 nonovertime 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 em-

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

(k) No employer shall employ any employee in domestic service in one or more households for a workweek longer than forty hours unless such employee receives compensation for such employment in accordance with subsection (a).

(l) 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 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 of 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.

(m) 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.

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 industry 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 *otherwise applicable* minimum wage rate [prescribed] 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 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.*

(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 *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 of 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 publication.

(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 in 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 reimburse 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.

(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.

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 employed 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, shell-

fish, 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 $50 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.]

(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).

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

(1) any employee with respect to whom the Secretary of Transportation 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 *engaged in the operation of a common carrier by rail and* 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 *who is* 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, *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

(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] *(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;* or

(8) [any employee] *(A) any employee (other than an employee of a hotel or motel who is employed to perform maid or custodial services) who is* employed by an establishment which is a hotel, motel, or restaurant *and who receives compensation for employ-*

ment 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) any employee of a hotel or motel who performs 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 [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 automobiles, trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; or]

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

(11) any employe 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 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]

(15) any employee engaged in the processing of 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 *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

(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 public agency engaged in fire protection or law enforcement activities (including security personnel in correctional institutions); or

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

(22) 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

(23) any employee or proprietor in a retail or service establishment, which qualifies as an exempt 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

(24) 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,

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

(25) 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

(26) 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

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

(28) 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.

[(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.]

(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.

(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) 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 has an annual dollar 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).

(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 sugarcane or sugar beets in an establishment primarily engaged in the processing of sugarcane 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.

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.

[(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 workweek) 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.]

(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 retail or service establishments.

(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.

(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 $1.30 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)), 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 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 opportunities of persons other than those employed under special certificates issued under this subsection. 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 the student status of the employees to be employed under such special certificate.

[(d)] *(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 and such employment is in accordance with applicable child labor laws.

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] *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. 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 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] *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. [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] *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.] *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. 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.

(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 for a violation of 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 make special statistical studies upon payment of the cost thereof, and for other purposes" (29 U.S.C. 9a).

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, on

(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.

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.

SECTIONS 6 AND 11 OF THE PORTAL-TO-PORTAL ACT OF 1947

SEC. 6. STATUTE OF LIMITATIONS.—Any action commenced on or after the date of the enactment of this Act to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act—

(a) if the cause of action accrues on or after the date of the enactment of this Act—may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued;

(b) if the cause of action accrued prior to the date of the enactment of this Act—may be commenced within whichever of the following periods is the shorter: (1) two years after the cause of action accrued, or (2) the period prescribed by the applicable State statute of limitations; and, except as provided in paragraph (c), every such action shall be forever barred unless commenced within the shorter of such two periods;

(c) if the cause of action accrued prior to the date of the enactment of this Act, the action shall not be barred by paragraph (b) if it is commenced within one hundred and twenty days after the date of the enactment of this Act unless at the time commenced it is barred by an applicable State statute of limitations;

(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 1974, 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.

* * * * * * *

SEC. 11. LIQUIDATED DAMAGES.—In any action commenced prior to or on or after the date of the enactment of this Act to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 16 [(b)] of such Act.

(b) In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 7 of this Act before the expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State law. If any requirement for the commencement of such proceeding is imposed by a State authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State authority.

NONDISCRIMINATION ON ACCOUNT OF AGE IN FEDERAL GOVERNMENT EMPLOYMENT

SEC. 15. (a) All personnel action affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, those units in the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on age.

(b) Except as otherwise provided in this subsection, the Civil Service Commission is authorized to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without backpay, as will effectuate the policies of this section. The Civil Service Commission shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

(1) be responsible for the review and evaluation of the operation of all agency programs designed to carry out the policy of this section, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(2) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to nondiscrimination in employment on account of age; and

(3) provide for the acceptance and processing of complaints of discrimination in Federal employment on account of age.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions of the Civil Service Commission which shall include a provision that an employee or applicant for employment shall be notified on any final action taken on

Age Discrimination in Employment Act of 1967

* * * * * * *

DEFINITIONS

SEC. 11. For the purposes of this Act—

(a) * * *

(b) The term "employer" means a person engaged in an industry affecting commerce who has [twenty-five] *twenty* or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year: *Provided*, That prior to June 30, 1968, employers having fewer than fifty employees shall not be considered employers. [The term also means any agent of such a person, but such term does not include the United States, a corporation wholly owned by the Government of the United States, or a State or political subdivision thereof.] *The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State and any interstate agency but such term does not include the United States, or a corporation wholly owned by the Government of the United States.*

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer and includes an agent of such a person; but shall not include an agency of the United States [, or an agency of a State or political subdivision of a State, except that such term shall include the United States Employment Service and the system of State and local employment services receiving Federal assistance].

* * * * * * *

(f) The term "employee" means an individual employed by any [employer] *employer except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency, or political subdivision.*

* * * * * * *

FEDERAL-STATE RELATIONSHIP

SEC. 14. (a) Nothing in this Act shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory employment practices on account of age except that upon commencement of action under this Act such action shall supersede any State action.

any complaint of discrimination filed by him thereunder. Reasonable exemptions to the provisions of this section may be established by the Commission but only when the Commission has established a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position. With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

(c) Any persons aggrieved may bring a civil action in any Federal district court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this Act.

(d) When the individual has not filed a complaint concerning age discrimination with the Commission, no civil action may be commended by any individual under this section until the individual has given the Commission not less than thirty days' notice of an intent to file such action. Such notice shall be filed within one hundred and eighty days after the alleged unlawful practice occurred. Upon receiving a notice of intent to sue, the Commission shall promptly notify all persons named therein as prospective defendants in the action and take any appropriate action to assure the elemination of any unlawful practice.

(e) Nothing contained in this section shall relieve any Government agency or official of the responsibility to assure nondiscrimination on account of age in employment as required under any provision of Federal law.

EFFECTIVE DATE

SEC. [15] *16.* This Act shall become effective one hundred and eighty days after enactment, except (a) that the Secretary of Labor may extend the delay in effective date of any provision of this Act up to an additional ninety days thereafter if he finds that such time is necessary in permitting adjustments to the provisions hereof, and (b) that on or after the date of enactment the Secretary of Labor is authorized to issue such rules and regulations as may be necessary to carry out its provisions.

APPROPRIATIONS

SEC. [16] *17.* There are hereby authorized to be appropriated such sums, not in excess of [$3,000,000] *$5,000,000* for any fiscal year, as may be necessary to carry out this Act.

APPENDIX.—AMENDMENTS TO SECTIONS 7(c), 7(d), 13(a), 13(b), AND 13(c) EFFECTIVE AFTER THE EFFECTIVE DATE OF THE FAIR LABOR STANDARDS AMENDMENTS OF 1973

EFFECTIVE JULY 1, 1974

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) * * *

* * * * * * *

(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] *$225,000* (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

EXEMPTIONS

EFFECTIVE ONE YEAR AFTER EFFECTIVE DATE

SEC. 13. (a) * * *

* * * * * * *

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

(1) * * *

* * * * * * *

(4) any employee *who is* 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, and who 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

(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 (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), if such employee receive 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

* * * * * * *

(8)(A) any employee (other than an employee of a hotel or motel who is employed to perform maid or custodial services who is employed by an establishment which is a hotel, motel, or restaurant and who receives compensation for employment in excess of [forty-eight] *forty-six* 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) any employee of a hotel or motel who performs maid or custodial services and who receives compensation for employment in excess of [forty-eight] *forty-six* hours in any workweek at a

rate not less than one and one-half times the regular rate at which he is employed; 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 and who 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

(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] *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

EFFECTIVE JANUARY 1, 1975

MAXIMUM HOURS

SEC. 7. (a) * * *

* * * * * * *

(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 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 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.

(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 ten 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.

* * * * * * *

EXEMPTIONS

SEC. 13. (a) * * *

* * * * * * *

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

(1) * * *

* * * * * * *

(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] *sixty-six* hours in any workweek for not more than six workweeks in a year,

(B) [sixty-four] *sixty* hours in any workweek for not more than four workweeks in that year,

(C) [fifty-four] *fifty* hours in any workweek for not more than two workweeks in that year, [and]

(D) [forty-eight hours on any other workweek in that year] *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,

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

(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] *sixty-six* hours in any workweek for not more than six workweeks in a year.

(B) [sixty-four] *sixty* hours in any workweek for not more than four workweeks in that year,

(C) [fifty-four] *fifty* 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] *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, at a rate not less than one and one-half times the regular rate at which he is employed; or

(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] sixty-six hours in any workweek for not more than six workweeks in a year.

(B) [sixty-four] sixty hours in any workweek for not more than four workweeks in that year,

(C) [fifty-four] fifty 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] 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, at a rate not less than one and one-half times the regular rate at which he is employed; or

EFFECTIVE JULY 1, 1975

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) * * *

* * * * * * *

(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 [$225,000] *$200,000* (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

EFFECTIVE TWO YEARS AFTER THE EFFECTIVE DATE

EXEMPTIONS

SEC. 13. (a) * * *

* * * * * * *

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

(1) * * *

* * * * * * *

[(4) any employee who is 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, and who receives compensation for employment in excess of 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]

* * * * * * *

[(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 (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-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]

* * * * * * *

(8)(A) any employee (other than an employee of a hotel or motel who is employed to perform maid or custodial services) who is employed by an establishment which is a hotel, motel, or restaurant and who receives compensation for employment in excess of [forty-six] *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

(B) any employee of a hotel or motel who performs maid or custodial services and who receives compensation for employment in excess of [forty-six] *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

* * * * * * *

[(18) any employee of a retail or service establishment is who 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 and who receives compensation for employment in excess of 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]

[(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-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]

EFFECTIVE JANUARY 1, 1976

MAXIMUM HOURS

SEC. 7. (a) * * *

* * * * * * *

(c) For a period or periods of not more than [five] *three* workweeks in the aggregate in any calendar year, or [seven] *five* 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 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.

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

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EXEMPTIONS

SEC. 13. (a) * * *

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

(1) * * *

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(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) [sixty-six] *sixty* hours in any workweek for not more than six workweeks in a year,

(B) [sixty] *fifty-six* hours in any workweek for not more than four workweeks in that year,

(C) [fifty] *forty-eight* hours in any workweek for not more than two workweeks in that year, and

(D) [forty-six] *forty-four* hours in any workweek for not more than two workweeks in that year, and

(E) [forty-four] *forty* 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

(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) [sixty-six] *sixty* hours in any workweek for not more than six workweeks in a year,

(B) [sixty] *fifty-six* hours in any workweek for not more than four workweeks in that year,

(C) [fifty] *forty-eight* hours in any workweek for not more than two workweeks in that year, and

(D) [forty-six] *forty-four* hours in any workweek for not more than two workweeks in that year, and

(E) [forty-four] *forty* hours in any other workweek in that year, at a rate not less than one and one-half times the regulate rate at which he is employed; or

EFFECTIVE JULY 1, 1976

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) * * *

* * * * * * *

(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 $200,000 (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

EFFECTIVE THREE YEARS AFTER THE EFFECTIVE DATE

EXEMPTIONS

SEC. 13. (a) * * *

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

(1) * * *

* * * * * * *

(8) [(A)] any employee (other than an employee of a hotel or motel who is employed to perform maid or custodial services) who is employed by an establishment which is a hotel, motel, or restaurant and who receives compensation for employment in excess of 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

[(B) any employee of a hotel or motel who performs maid or custodial services and who receives compensation for employment in excess of 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]

EFFECTIVE DECEMBER 31, 1976—JANUARY 1, 1977

MAXIMUM HOURS

SEC. 7. (a) * * *

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[(c) For a period or periods of not more than three workweeks in the aggregate in any calendar year, or five 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 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.

[(d) For a period or periods of not more than three workweeks in the aggregate in any calendar year, or five 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, packaging, 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 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.]

SEPARATE VIEWS OF MR. BADILLO TO REPORT ACCOMPANYING H.R. 12435, TO AMEND THE FAIR LABOR STANDARDS ACT

Some eight years have passed since the Fair Labor Standards Act was last amended and it was almost four years ago that legislation designed to raise the Federal minimum wage was first considered. During this period this nation has been beset by rampant inflation, soaring taxes, a continuing unemployment and underemployment crisis and spiraling prices. The dollar's purchasing power—especially in light of devaluation and the administration's failure to take effective and realistic action to cope with varied economic problems—has been severely eroded. In view of the fact that the cost of living has risen by more than 25 per cent since the minimum wage was last raised, the present $1.60 per hour minimum has been completely destroyed and $1.60 today buys less than $1.25 bought eight years ago. This current minimum wage of $1.60 fails to even approach the Federally defined poverty level for a family of four of $4,200 per annum. Thus, there can be no question that the minimum wage must be raised—and raised substantially—without further delay.

Although I am encouraged by the unanimity which was demonstrated in reporting this legislation out of our committee, I am deeply troubled by the almost meaningless increase in the minimum wage embodied in this bill. As this report aptly notes, a covered nonfarm worker receiving $2.00 per hour on a 40 hours per week/50 weeks per year employment basis will be *grossing* less than the annual *net* income considered to be the level of poverty. One must also take into account deductions which will be made for taxes and social security, thereby substantially lowering the worker's take-home pay. This is a tragic situation, particularly when one considers the fact that in the City of New York a family of four receives even more—$4,092—on welfare!

During the debate on the Fair Labor Standards Act amendments last year I reported that Bureau of Labor Statistics figures reveal that the lowest budget for the cost of family consumption for a family of

four in the New York City metropolitan area is $6353 annually. However, the total budget for a family of four increases to $7841 when you include social security contributions, income taxes and other similar payments. This is what the Bureau of Labor Statistics describes as a "lower than intermediate level of living." In addition it is critical to take into account the fact that, in the New York City-Northeast New Jersey area, the consumer price index for all items rose by 10.2 per cent in the period October 72 to January 1974. Thus it is clear that a $2.30 minimum wage—which under this present legislation will not be reached until January 1976—will be insufficient. It must be understood that when you consider that a full-time worker must attempt to support his family on a meager salary such as that proposed under H.R. 12435, he will simply not be able to make ends meet. The drastic inflation of food prices, for example, has a tremendous effect on those workers who are struggling to support their families on the minimum wage. However, as these food prices increase in the absence of any proportional increase in the minimum wage, the families of these workers are forced into malnutrition and hunger as they are less and less able to buy balanced diets.

Even though the increases in the minimum wage authorized under this legislation are woefully inadequate and will bring little relief to those millions classified as the working poor, I will support the measure—and urge my colleagues to do so as well—as it is the only possibility of taking some initiatives to aid the working American. Further, the passage of this legislation is important as it extends wage and overtime protections to millions of American workers not presently covered by the FLSA. Especially important is the fact that this coverage is provided for all Federal, state and local government employees. Also, domestic workers—long at the very bottom rung of the economic ladder and representing a significant percentage of heads of households—are finally afforded the protections of the Fair Labor Standards Act. By authorizing these long-overdue extensions of FLSA coverage we will be removing large numbers of workers from the second-class status which they have been forced to endure for far too many years.

The House must act on this legislation without further delay as we have already delayed to long. Further we must be prepared to override a veto should the President repeat his ill-conceived and regressive action of last year. Despite its shortcomings H.R. 12435 must be enacted in order to provide even a modicum of assistance to the millions of underpaid and unprotected working men and women of this country.

HERMAN BADILLO.

DISSENTING VIEWS OF MR. LANDGREBE ON H.R. 12435

It is regrettable, though characteristic, that the debate and discussion on H.R. 12435 and on last year's "minimum wage" bill, H.R. 7935, has centered around the degree to which the government should raise its arbitrarily decreed minimum wage—I think the debate should have centered around the question of whether or not there should be a minimum wage law at all.

The law of supply and demand is ironclad. If wages are arbitrarily raised above the free market level, unemployment is the inevitable result. It is the marginal workers who are ousted from jobs, which means that the physically and mentally handicapped, the young, the old, and unskilled are thrown out of work by government decree.

It never ceases to amaze me that often those who pose as champions of the young, the old, the handicapped, and the unskilled, turn around and order these workers to be unemployed.

Increasing the minimum wage will also raise prices. Thus not only do some workers lose their jobs, but the wages of those who retain their employment are automatically reduced in value.

H.R. 12435 means more unemployment and higher prices. Those who favor more jobs and less inflation will oppose it.

EARL F. LANDGREBE.

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