of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

(June 23, 1947, ch. 120, title III, § 303, 61 Stat. 158; Pub. L. 86–257, title VII, § 704(e), Sept. 14, 1959, 73 Stat. 545.)

AMENDMENTS

1959—Subsec. (a). Pub. L. 86–257 struck out provisions which specified particular practices that were unlawful, and inserted reference to practices defined in section 158(b)(4) of this title, which section defines the unfair labor practices formerly enumerated in this subsection.

§ 188. Repealed. Aug. 9, 1955, ch. 690, § 4(3), 69 Stat. 625

Section, act June 23, 1947, ch. 120, title III, § 305, 61 Stat. 160, forbade striking by Government employees, required discharge of striking employee and forfeiture of his civil-service status, and made him ineligible for employment for three years. See sections 3333 and 7311 of Title 5, Government Organization and Employees, and section 1918 of Title 18, Crimes and Criminal Procedure.

SUBCHAPTER V—CONGRESSIONAL JOINT COMMITTEE ON LABOR-MANAGEMENT RELATIONS

§§ 191 to 197. Omitted

CODIFICATION

Section 191, act June 23, 1947, ch. 120, title IV, § 401, 61 Stat. 160, related to establishment and composition of Joint Committee on Labor-Management Relations.

Section 192, act June 23, 1947, ch. 120, title IV, § 402, 61 Stat. 160, related to a study by committee of the entire field of labor-management relations.

Section 193, acts June 23, 1947, ch. 120, title IV, § 403, 61 Stat. 160; Aug. 10, 1948, ch. 833, 62 Stat. 1286, related to a final report to Congress to be submitted no later than March 1, 1949.

Section 194, act June 23, 1947, ch. 120, title IV, § 404, 61 Stat. 161, related to employment and compensation of experts and other personnel.

Section 195, act June 23, 1947, ch. 120, title IV, § 405, 61 Stat. 161, related to hearings, calling of witnesses, production of evidence.

Section 196, act June 23, 1947, ch. 120, title IV, § 406, 61 Stat. 161, related to reimbursement of committee members for expenses.

Section 197, act June 23, 1947, ch. 120, title IV, § 407, 61 Stat. 161, related to appropriation of funds.

CHAPTER 8—FAIR LABOR STANDARDS

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 251 to 262, 795, 1802 of this title; title 2 sections 60k, 1302, 1313, 1371, 1434; title 3 sections 402, 413; title 5 section 2105; title 7 sections 2015, 2026, 2029; title 15 sections 1014, 3152; title 38 section 1718; title 41 section 355; title 42 sections 1437t, 3056, 5044, 8009, 8011, 12655*l*.

§201. Short title

This chapter may be cited as the ''Fair Labor Standards Act of 1938''.

(June 25, 1938, ch. 676, §1, 52 Stat. 1060.)

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–188, [title II], §2104(a), Aug. 20, 1996, 110 Stat. 1928, provided that: ''This section [amending section 206 of this title] may be cited as the 'Minimum Wage Increase Act of 1996'.''

SHORT TITLE OF 1995 AMENDMENT

Pub. L. 104–26, §1, Sept. 6, 1995, 109 Stat. 264, provided that: ''This Act [amending section 207 of this title and enacting provisions set out as a note under section 207 of this title] may be cited as the 'Court Reporter Fair Labor Amendments of 1995'.''

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–157, §1(a), Nov. 17, 1989, 103 Stat. 938, provided that: ''This Act [enacting section 60k of Title 2, The Congress, amending sections 203, 205 to 208, 213, 214, and 216 of this title, and enacting provisions set out as notes under sections 203 and 206 of this title] may be cited as the 'Fair Labor Standards Amendments of 1989'.''

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99–150, §1(a), Nov. 13, 1985, 99 Stat. 787, provided that: ''This Act [amending sections 203, 207, and 211 of this title and enacting provisions set out as notes under sections 203, 207, 215, and 216 of this title] may be cited as the 'Fair Labor Standards Amendments of 1985'.''

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95–151, §1(a), Nov. 1, 1977, 91 Stat. 1245, provided that: ''This Act [amending sections 203, 206, 208, 213, 214, and 216 of this title and enacting provisions set out as notes under sections 203, 204, and 213 of this title] may be cited as the 'Fair Labor Standards Amendments of 1977'.''

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93–259, §1(a), Apr. 8, 1974, 88 Stat. 55, provided that: ''This Act [enacting section 633a of this title, amending sections 202 to 208, 210, 212 to 214, 216, 255, 260, 630, and 634 of this title, and enacting provisions set out as notes under this section and sections 202, 206, 207, 213, and 621 of this title] may be cited as the 'Fair Labor Standards Amendments of 1974'.''

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89–601, §1, Sept. 23, 1966, 80 Stat. 830, provided: ''That this Act [amending sections 203, 206, 207, 213, 214, 216, 218, and 255 of this title, and enacting provisions set out as notes under sections 207 and 214 of this title, section 1082 of former Title 5, Executive Departments and Government Officers and Employees, and section 2000e–14 of Title 42, The Public Health and Welfare] may be cited as the 'Fair Labor Standards Amendments of 1966'.''

SHORT TITLE OF 1963 AMENDMENT

Pub. L. 88–38, §1, June 10, 1963, 77 Stat. 56, provided: ''That this Act [amending section 206 of this title and enacting provisions set out as notes under section 206 of this title] may be cited as the 'Equal Pay Act of 1963'.''

SHORT TITLE OF 1961 AMENDMENT

Pub. L. 87–30, §1, May 5, 1961, 75 Stat. 65, provided: ''That this Act [amending sections 203 to 208, 212 to 214, 216, and 217 of this title and enacting provisions set out as a note under section 213 of this title] may be cited as the 'Fair Labor Standards Amendments of 1961'.''

SHORT TITLE OF 1956 AMENDMENT

Act Aug. 8, 1956, ch. 1035, §1, 70 Stat. 1118, provided: ''That this Act [amending sections 206, 213, and 216 of this title] may be cited as the 'American Samoa Labor Standards Amendments of 1956'.''

SHORT TITLE OF 1955 AMENDMENT

Act Aug. 12, 1955, ch. 867, §1, 69 Stat. 711, provided: ''That this Act [amending sections 204–206, 208, and 210

of this title and enacting provisions set out as notes under sections 204, 206, and 208 of this title] may be cited as the 'Fair Labor Standards Amendments of 1955'.''

SHORT TITLE OF 1949 AMENDMENT

Act Oct. 26, 1949, ch. 736, § 1, 63 Stat. 910, provided: ''That this Act [enacting section 216b of this title, amending sections 202 to 208, 211 to 216, and 217 of this title, and repealing section 216a of this title] may be cited as the 'Fair Labor Standards Amendments of 1949'.''

§ 202. Congressional finding and declaration of policy

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

(b) It is declared to be the policy of this chapter, 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.

(June 25, 1938, ch. 676, § 2, 52 Stat. 1060; Oct. 26, 1949, ch. 736, § 2, 63 Stat. 910; Pub. L. 93–259, § 7(a), Apr. 8, 1974, 88 Stat. 62.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–259 inserted finding of Congress that employment of persons in domestic service in households affects commerce.

1949—Subsec. (b). Act Oct. 26, 1949, inserted reference to regulation of commerce with foreign nations.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 29(a) of Pub. L. 93–259 provided that: ''Except as otherwise specifically provided, the amendments made by this Act [see Short Title of 1974 Amendment note set out under section 201 of this title] shall take effect on May 1, 1974.''

EFFECTIVE DATE OF 1949 AMENDMENT

Section 16(a) of act Oct. 26, 1949, provided that: ''The amendments made by this Act [enacting section 216b of this title, amending this section and sections 203 to 208, 211 to 216, and 217 of this title, and repealing section 216a of this title] shall take effect upon the expiration of ninety days from the date of its enactment [Oct. 26, 1947]; except that the amendment made by section 4 [amending section 204 of this title] shall take effect on the date of its enactment [Oct. 26, 1949].''

RULES, REGULATIONS, AND ORDERS WITH REGARD TO FAIR LABOR STANDARDS AMENDMENTS OF 1974

Section 29(b) of Pub. L. 93–259 provided that: ''Notwithstanding subsection (a) [set out as an Effective Date of 1974 Amendment note above], on and after the date of the enactment of this Act [Apr. 8, 1974] the Secretary of Labor is authorized to prescribe necessary rules, regulations, and orders with regard to the amendments made by this Act [see Short Title of 1974 Amendment note set out under section 201 of this title].''

§ 203. Definitions

As used in this chapter—

(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 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)(1) Except as provided in paragraphs (2), (3), and (4), 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),

(ii) in any executive agency (as defined in section 105 of such title),

(iii) in any unit of the 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,

(v) in the Library of Congress, or

(vi) the[1] Government Printing Office;

(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 employes 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 officeholder to serve on a policymaking level,

(IV) is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office, or

(V) is an employee in the legislative branch or legislative body of that State,

[1] So in original. Probably should be preceded by ''in''.

political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

(3) For purposes of subsection (u) of this section, 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.

(4)(A) The term ''employee'' does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if—

(i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

(ii) such services are not the same type of services which the individual is employed to perform for such public agency.

(B) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency may volunteer to perform services for any other State, political subdivision, or interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement.

(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 1141j(g) of title 12), 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 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 chapter 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 Administrator, 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 an employer is required to pay a tipped employee, the amount paid such employee by the employee's employer shall be an amount equal to—

(1) the cash wage paid such employee which for purposes of such determination shall be not less than the cash wage required to be paid such an employee on August 20, 1996; and

(2) an additional amount on account of the tips received by such employee which amount

is equal to the difference between the wage specified in paragraph (1) and the wage in effect under section 206(a)(1) of this title.

The additional amount on account of tips may not exceed the value of the tips actually received by an employee. The preceding 2 sentences shall not apply with respect to any tipped employee unless such employee has been informed by the employer of the provisions of this subsection, and all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to 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 206 and 207 of this title 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)(1) ''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. 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, and agreement, (A) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (B) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (C) 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.

(2) For purposes of paragraph (1), the activities performed by any person or persons—

(A) 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 operated for profit or not for profit), or

(B) 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

(C) in connection with the activities of a public agency,

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

(s)(1) ''Enterprise engaged in commerce or in the production of goods for commerce'' means an enterprise that—

(A)(i) has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and

(ii) 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 that are separately stated);

(B) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or 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

(C) is an activity of a public agency.

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

(t) ''Tipped employee'' means any employee engaged in an occupation in which he customarily and regularly receives more than $30 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.

(June 25, 1938, ch. 676, §3, 52 Stat. 1060; 1946 Reorg. Plan No. 2, §1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Oct. 26, 1949, ch. 736, §3, 63 Stat. 911; Pub. L. 87–30, §2, May 5, 1961, 75 Stat. 65; Pub. L. 89–601, title I, §§101–103, title II, §215(a), Sept. 23, 1966, 80 Stat. 830–832, 837; Pub. L. 92–318, title IX, §906(b)(2), (3), June 23, 1972, 86 Stat. 375; Pub. L. 93–259, §§6(a), 13(e), Apr. 8, 1974, 88 Stat. 58, 64; Pub. L. 95–151, §§3(a), (b), 9(a)–(c), Nov. 1, 1977, 91 Stat. 1249, 1251; Pub. L. 99–150, §§4(a), 5, Nov. 13, 1985, 99 Stat. 790; Pub. L. 101–157, §§3(a), (d), 5, Nov. 17, 1989, 103 Stat. 938, 939, 941; Pub. L. 104–1, title II, §203(d), Jan. 23, 1995, 109 Stat. 10; Pub. L. 104–188, [title II], §2105(b), Aug. 20, 1996, 110 Stat. 1929.)

AMENDMENTS

1996—Subsec. (m). Pub. L. 104–188 inserted ''In determining the wage an employer is required to pay a tipped employee, the amount paid such employee by the employee's employer shall be an amount equal to—

''(1) the cash wage paid such employee which for purposes of such determination shall be not less than the cash wage required to be paid such an employee on August 20, 1996; and

''(2) an additional amount on account of the tips received by such employee which amount is equal to the difference between the wage specified in paragraph (1) and the wage in effect under section 206(a)(1) of this title.

The additional amount on account of tips may not exceed the value of the tips actually received by an employee.'', and struck out former penultimate sentence which read as follows: ''In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of (1) 45 percent of the applicable minimum wage rate during the year beginning April 1, 1990, and (2) 50 percent of the applicable minimum wage rate after March 31, 1991, except that the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee.''

Pub. L. 104–188 in last sentence substituted ''preceding 2 sentences'' for ''previous sentence'' and struck out ''(1)'' after ''employee unless'' and ''(2)'' after ''subsection, and''.

1995—Subsec. (e)(2)(A). Pub. L. 104–1 struck out ''legislative or'' before ''judicial branch'' in cl. (iii) and added cl. (vi).

1989—Subsec. (m). Pub. L. 101–157, §5, substituted ''in excess of (1) 45 percent of the applicable minimum wage rate during the year beginning April 1, 1990, and (2) 50 percent of the applicable minimum wage rate after March 31, 1991,'' for ''in excess of 40 per centum of the applicable minimum wage rate,''.

Subsec. (r). Pub. L. 101–157, §3(d), designated first sentence as par. (1), made a separate sentence out of the existing proviso and redesignated cls. (1), (2), and (3) as (A), (B), and (C), respectively, designated second sentence as par. (2), in par. (2) as so designated, redesignated existing pars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively, and, in subpar. (A) as so redesignated, substituted ''school is operated'' for ''school is public or private or operated''.

Subsec. (s). Pub. L. 101–157, §3(a), amended subsec. (s) generally, completely revising definition of ''enterprise engaged in commerce or in the production of goods for commerce''.

1985—Subsec. (e)(1). Pub. L. 99–150, §4(a)(1), substituted ''paragraphs (2), (3), and (4)'' for ''paragraphs (2) and (3)''.

Subsec. (e)(2)(C)(ii). Pub. L. 99–150, §5, struck out ''or'' at end of subcl. (III), struck out ''who'' in subcl. (IV) before ''is an'', substituted '', or'' for period at end of subcl. (IV), and added subcl. (V).

Subsec. (e)(4). Pub. L. 99–150, §4(a)(2), added par. (4).

1977—Subsec. (m). Pub. L. 95–151, §3(b), substituted ''45 per centum'' for ''50 per centum'', effective Jan. 1, 1979, and ''40 per centum'' for ''45 per centum'', effective Jan. 1, 1980.

Subsec. (s). Pub. L. 95–151, §9(a)–(c), in par. (1) inserted exception for enterprises comprised exclusively of retail or service establishments and described in par. (2), added par. (2), redesignated former pars. (2) to (5) as (3) to (6), respectively, and in text following par. (6), as so redesignated, inserted provisions relating to coverage of retail or service establishments subject to section 206(a)(1) of this title on June 30, 1978, and provisions relating to violations of such coverage requirements.

Subsec. (t). Pub. L. 95–151, §3(a), substituted ''$30'' for ''$20''.

1974—Subsec. (d). Pub. L. 93–259, §6(a)(1), redefined ''employer'' to include a public agency and struck out text which excluded from such term 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 last sentence of subsec. (r) of this section, or (2) in the operation of a railway or carrier referred to in such sentence).

Subsec. (e). Pub. L. 93–259, §6(a)(2), in revising definition of ''employee'', incorporated existing introductory text in provisions designated as par. (1), inserting exception provision; added par. (2); incorporated existing cl. (1) in provisions designated as par. (3); and struck out former cl. (2) excepting from ''employee'', ''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 engaged in agriculture less than thirteen weeks during the preceding calendar year''.

Subsec. (h). Pub. L. 93–259, §6(a)(3), substituted ''other activity, or branch or group thereof'' for ''branch thereof, or group of industries''.

Subsec. (m). Pub. L. 93–259, §13(e), substituted in provision respecting wage of tipped employee ''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'' for ''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'' and inserted ''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 subsection, and (2) all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.''

Subsec. (r)(3). Pub. L. 93–259, §6(a)(4), added par. (3).

Subsec. (s). Pub. L. 93–259, §6(a)(5), in first sentence substituted preceding par. (1) ''or employees handling, selling, or otherwise working on goods or materials'' for ''including employees handling, selling, or otherwise working on goods'' and added par. (5), and inserted third sentence deeming employees of an enterprise which is a public agency to be employees engaged in commerce, or in 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.

Subsec. (x). Pub. L. 93–259, § 6(a)(6), added subsec. (x).

1972—Subsecs. (r)(1), (s)(4). Pub. L. 92–318, § 906(b)(2), (3), inserted reference to a preschool.

1966—Subsec. (d). Pub. L. 89–601, § 102(b), expanded definition of employer to include a State or a political subdivision thereof with respect to employees in a hospital, institution, or school referred to in last sentence of subsec. (r) of this section, or in the operation of a railway or carrier referred to in such sentence.

Subsec. (e). Pub. L. 89–601, § 103(a), excluded from definition of ''employee,'' when that term is used in definition of ''man-day,'' any agricultural employee who is the parent, spouse, child, or other member of his employer's immediate family and any agricultural hand harvest laborer, paid on a piece rate basis, who commutes daily from his permanent residence to the farm on which he is so employed, and who has been employed in agriculture less than 13 weeks during the preceding calendar year.

Subsec. (m). Pub. L. 89–601, § 101(a), inserted provisions for determining the wage of a tipped employee.

Subsec. (n). Pub. L. 89–601, § 215(a), struck out provision which directed that definition of ''resale'' was not applicable when ''resale'' was used in subsection (s)(1) of this section.

Subsec. (r). Pub. L. 89–601, § 102(a), extended activities performed for a business purpose to include activities in the operation of hospitals, institutions for the sick, aged, or mentally ill or defective, schools for the handicapped, elementary and secondary schools, institutions of higher learning, or street, suburban, or interurban electric railway or local trolley or motorbus carriers if subject to regulation by a State or local agency regardless of whether public or private or whether operated for profit or not for profit.

Subsec. (s). Pub. L. 89–601, § 102(c), removed gross annual business level tests of $1,000,000 for retail and service enterprises, street, suburban, or interurban electric railways or local trolley or motorbus carriers, and brought within the coverage of the gross annual business test all enterprises having employees engaged in commerce in the production of goods for commerce, including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce, lowered the minimum gross annual volume test for covered enterprises from $1,000,000 to $500,000 for the period from Feb. 1, 1967, through Jan. 31, 1969, and to $250,000 for the period after Jan. 31, 1969, retained the $250,000 annual gross volume test for coverage of gasoline service establishments, and expanded coverage to include laundering or cleaning services, construction or reconstruction activities, or operation of hospitals, certain institutions for the care of the sick, aged, or mentally ill, certain special schools, and institutions of higher learning regardless of annual gross volume.

Subsec. (t). Pub. L. 89–601, § 101(b), added subsec. (t).

Subsec. (u). Pub. L. 89–601, § 103(b), added subsec. (u).

Subsecs. (v), (w). Pub. L. 89–601, § 102(d), added subsecs. (v) and (w).

1961—Subsec. (m). Pub. L. 87–30, § 2(a), provided for exclusion from wages under a collective-bargaining agreement the cost of board, lodging, or other facilities and authorized the Secretary to determine the fair value of board, lodging, or other facilities for defined classes of employees in defined areas to be used in lieu of actual cost.

Subsec. (n). Pub. L. 87–30, § 2(b), inserted '', except as used in subsection (s)(1) of this section,''.

Subsecs. (p) to (s). Pub. L. 87–30, § 2(c), added subsecs. (p) to (s).

1949—Subsec. (b). Act Oct. 26, 1949, § 3(a), substituted ''between'' for ''from'' after ''States or'', and ''and'' for ''to'' before ''any place''.

Subsec. (j). Act Oct. 26, 1949, § 3(b), inserted ''closely related'' before ''process'' and substituted ''directly essential'' for ''necessary'' after ''occupation''.

Subsec. (*l*)(1). Act Oct. 26, 1949, § 3(c), included parental employment of a child under 16 years of age in an occupation found by the Secretary of Labor to be hazardous for children between the ages of 16 and 18 years, in definition of oppressive child labor.

Subsecs. (n), (*o*). Act Oct. 26, 1949, § 3(d), added subsecs. (n) and (*o*).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 3(e) of Pub. L. 101–157 provided that: ''The amendments made by this section [amending this section and section 213 of this title] shall become effective on April 1, 1990.''

Section 5 of Pub. L. 101–157 provided that the amendment made by that section is effective Apr. 1, 1990.

EFFECTIVE DATE OF 1985 AMENDMENT; PROMULGATION OF REGULATIONS

Section 6 of Pub. L. 99–150 provided that: ''The amendments made by this Act [amending this section and sections 207 and 211 of this title and enacting provisions set out as notes under this section and sections 201, 207, 215, and 216 of this title] shall take effect April 15, 1986. The Secretary of Labor shall before such date promulgate such regulations as may be required to implement such amendments.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 3(a) of Pub. L. 95–151 provided that the amendment made by that section is effective Jan. 1, 1978.

Section 3(b)(1) of Pub. L. 95–151 provided that the amendment made by that section, reducing the maximum percentage of the minimum wage used in determining tips as wages from 50 to 45 per centum, is effective Jan. 1, 1979.

Section 3(b)(2) of Pub. L. 95–151 provided that the amendment made by that section, reducing the maximum percentage of the minimum wage used in determining tips as wages from 45 to 40 per centum, is effective Jan. 1, 1980.

Section 15(a), (b) of Pub. L. 95–151 provided that:

''(a) Except as provided in sections 3, 14, and subsection (b) of this section, the amendments made by this Act [amending sections 206, 208, 213, and 216 of this title and enacting provisions set out as a note under section 204 of this title] shall take effect January 1, 1978.

''(b) The amendments made by sections 8, 9, 11, 12, and 13 [amending this section and sections 213 and 214 of this title] shall take effect on the date of the enactment of this Act [Nov. 1, 1977].''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 602 of Pub. L. 89–601 provided in part that: ''Except as otherwise provided in this Act, the amendments made by this Act [amending this section and sections 206, 207, 213, 214, 216, 218, and 255 of this title] shall take effect on February 1, 1967.''

EFFECTIVE DATE OF 1961 AMENDMENT

Section 14 of Pub. L. 87–30 provided that: ''The amendments made by this Act [amending this section and sections 204 to 208, 212 to 214, 216, and 217 of this title] shall take effect upon the expiration of one hundred and twenty days after the date of its enactment [May 5, 1961], except as otherwise provided in such amendments and except that the authority to promulgate necessary rules, regulations, or orders with regard to amendments made by this Act, under the Fair Labor Standards Act of 1938 and amendments thereto [this chapter], including amendments made by this Act, may be exercised by the Secretary on and after the date of enactment of this Act [May 5, 1961].''

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

TRANSFER OF FUNCTIONS

In subsec. (*l*), ''Secretary of Labor'' substituted for ''Chief of the Children's Bureau in the Department of Labor'' and for ''Chief of the Children's Bureau'' pursuant to Reorg. Plan No. 2 of 1946, §1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, set out in the Appendix to Title 5, Government Organization and Employees, which transferred functions of Children's Bureau and its Chief under sections 201 to 216 and 217 to 219 of this title to Secretary of Labor to be performed under his direction and control by such officers and employees of Department of Labor as he designates.

PRESERVATION OF COVERAGE

Section 3(b) of Pub. L. 101–157 provided that:

''(1) IN GENERAL.—Any enterprise that on March 31, 1990, was subject to section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) and that because of the amendment made by subsection (a) [amending this section] is not subject to such section shall—

''(A) pay its employees not less than the minimum wage in effect under such section on March 31, 1990;

''(B) pay its employees in accordance with section 7 of such Act (29 U.S.C. 207); and

''(C) remain subject to section 12 of such Act (29 U.S.C. 212).

''(2) VIOLATIONS.—A violation of paragraph (1) shall be considered a violation of section 6, 7, or 12 of the Fair Labor Standards Act of 1938 [29 U.S.C. 206, 207, 212], as the case may be.''

VOLUNTEERS; PROMULGATION OF REGULATIONS

Section 4(b) of Pub. L. 99–150 provided that: ''Not later than March 15, 1986, the Secretary of Labor shall issue regulations to carry out paragraph (4) of section 3(e) (as amended by subsection (a) of this section) [29 U.S.C. 203(e)(4)].''

PRACTICE OF PUBLIC AGENCY IN TREATING CERTAIN INDIVIDUALS AS VOLUNTEERS PRIOR TO APRIL 15, 1986; LIABILITY

Section 4(c) of Pub. L. 99–150 provided that: ''If, before April 15, 1986, the practice of a public agency was to treat certain individuals as volunteers, such individuals shall until April 15, 1986, be considered, for purposes of the Fair Labor Standards Act of 1938 [this chapter], as volunteers and not as employees. No public agency which is a State, a political subdivision of a State, or an interstate governmental agency shall be liable for a violation of section 6 [29 U.S.C. 206] occurring before April 15, 1986, with respect to services deemed by that agency to have been performed for it by an individual on a voluntary basis.''

STATUS OF BAGGERS AT COMMISSARY OF MILITARY DEPARTMENT

Pub. L. 95–485, title VIII, §819, Oct. 20, 1978, 92 Stat. 1626, provided that: ''Notwithstanding any other provision of law, an individual who performs bagger or carryout service for patrons of a commissary of a military department may not be considered to be an employee for purposes of the Fair Labor Standards Act of 1938 [this chapter] by virtue of such service if the sole compensation of such individual for such service is derived from tips.''

ADMINISTRATIVE ACTION BY SECRETARY OF LABOR WITH REGARD TO IMPLEMENTATION OF FAIR LABOR STANDARDS AMENDMENTS OF 1977

Section 15(c) of Pub. L. 95–151 provided that: ''On and after the date of the enactment of this Act [Nov. 1, 1977], the Secretary of Labor shall take such administrative action as may be necessary for the implementation of the amendments made by this Act [See Short Title of 1977 Amendment note set out under section 201 of this title].''

RULES, REGULATIONS, AND ORDERS PROMULGATED WITH REGARD TO 1966 AMENDMENTS

Section 602 of Pub. L. 89–601 provided in part that: ''On and after the date of the enactment of this Act [Sept. 23, 1966] the Secretary is authorized to promulgate necessary rules, regulations, or orders with regard to the amendments made by this Act [see Short Title of 1966 Amendment note set out under section 201 of this title].''

CROSS REFERENCES

Portal-to-Portal Act of 1947, sections 251 to 262 of this title, as affected by subsec. (*o*), see section 216 note of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1802, 2001, 2611 of this title; title 8 sections 1101, 1186; title 26 section 45B; title 49 sections 3101, 31501.

§ 204. Administration

(a) Creation of Wage and Hour Division in Department of Labor; Administrator

There is 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 chapter referred to as the ''Administrator''). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate.

(b) Appointment, selection, classification, and promotion of employees by Administrator

The Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary to carry out his functions and duties under this chapter and shall fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of title 5. The Administrator 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 Administrator 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 Administrator, 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) Principal office of Administrator; jurisdiction

The principal office of the Administrator 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) Biennial report to Congress; studies of exemptions to hour and wage provisions and means to prevent curtailment of employment opportunities

(1) The Secretary shall submit biennially in January a report to the Congress covering his activities for the preceding two years and including such information, data, and recommendations for further legislation in connection with the matters covered by this chapter 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 chapter, 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 214(b) of this title.

(2) The Secretary shall conduct studies on the justification or lack thereof for each of the special exemptions set forth in section 213 of this title, 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.

(3) The Secretary shall conduct a continuing study on means to prevent curtailment of employment opportunities for manpower groups which have had historically high incidences of unemployment (such as disadvantaged minorities, youth, elderly, and such other groups as the Secretary may designate). The first report of the results of such study shall be transmitted to the Congress not later than one year after the effective date of the Fair Labor Standards Amendments of 1974. Subsequent reports on such study shall be transmitted to the Congress at two-year intervals after such effective date. Each such report shall include suggestions respecting the Secretary's authority under section 214 of this title.

(e) Study of effects of foreign production on unemployment; report to President and Congress

Whenever the Secretary has reason to believe that in any industry under this chapter 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 chapter as he may determine to be pertinent to such report.

(f) Employees of Library of Congress; administration of provisions by Office of Personnel Management

The Secretary is authorized to enter into an agreement with the Librarian of Congress with respect to individuals employed in the Library of Congress to provide for the carrying out of the Secretary's functions under this chapter with respect to such individuals. Notwithstanding any other provision of this chapter, or any other law, the Director of the Office of Personnel Management is authorized to administer the provisions of this chapter with respect to any individual employed by the United States (other than an individual employed in the Library of Congress, United States Postal Service, Postal Rate Commission, or the Tennessee Valley Authority). 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 216(b) of this title.

(June 25, 1938, ch. 676, § 4, 52 Stat. 1061; Oct. 26, 1949, ch. 736, § 4, 63 Stat. 911; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Aug. 12, 1955, ch. 867, § 2, 69 Stat. 711; Pub. L. 87–30, § 3, May 5, 1961, 75 Stat. 66; Pub. L. 93–259, §§ 6(b), 24(c), 27, Apr. 8, 1974, 88 Stat. 60, 72, 73; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 104–66, title I, § 1102(a), Dec. 21, 1995, 109 Stat. 722.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (b), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The effective date of the Fair Labor Standards Amendments of 1974, referred to in subsec. (d)(3), is the effective date of Pub. L. 93–259, which is May 1, 1974, except as otherwise specifically provided, see section 29(a) of Pub. L. 93–259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

CODIFICATION

In subsec. (a), provisions that prescribed the compensation of the Administrator were omitted to conform to the provisions of the Executive Schedule. See section 5316 of Title 5, Government Organization and Employees.

In subsec. (b), "chapter 51 and subchapter III of chapter 53 of title 5" substituted for "the Classification Act of 1949, as amended" on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5.

AMENDMENTS

1995—Subsec. (d)(1). Pub. L. 104–66 in first sentence substituted "biennially" and "preceding two years" for "annually" and "preceding year", respectively.

1974—Subsec. (d)(1). Pub. L. 93–259, §§ 24(c), 27(1), (2), inserted provision at end of subsec. (d) requiring the report to Congress to include a summary of the special certificates issued under section 214(b) of this title, designated subsec. (d) provisions as subsec. (d)(1), and required the report to contain an evaluation and appraisal of overtime coverage established by this chapter, respectively.

Subsec. (d)(2), (3). Pub. L. 93–259, § 27(3), added pars. (2) and (3).

Subsec. (f). Pub. L. 93–259, § 6(b), added subsec. (f).

1961—Subsec. (e). Pub. L. 87–30 added subsec. (e).

1955—Subsec. (d). Act Aug. 12, 1955, required an evaluation and appraisal by the Secretary of the minimum wages, together with his recommendations to Congress, to be included in the annual report.

1949—Subsec. (b). Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923".

Subsec. (a). Act Oct. 26, 1949, increased compensation of Administrator to $15,000.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87–30, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

REPEALS

Acts Oct. 26, 1949, ch. 736, §4, 63 Stat. 911, and Oct. 28, 1949, ch. 782, cited as a credit to this section, were repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

TRANSFER OF FUNCTIONS

Functions relating to enforcement and administration of equal pay provisions vested by subsecs. (d)(1) and (f) of this section in Secretary of Labor and Civil Service Commission transferred to Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, §1, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

''Director of the Office of Personnel Management'' substituted for ''Civil Service Commission'' in subsec. (f), pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

Functions of all other officers of Department of Labor and functions of all agencies and employees of that Department, with exception of functions vested by Administrative Procedure Act (now covered by sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by Department, transferred to Secretary of Labor, with power vested in him to authorize their performance or performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

MINIMUM WAGE STUDY COMMISSION; ESTABLISHMENT, PURPOSES, COMPOSITION, ETC.

Pub. L. 95–151, §2(e), Nov. 1, 1977, 91 Stat. 1246, provided for the establishment, purposes, composition, etc., of the Minimum Wage Study Commission, the submission of reports, with the latest report being submitted to the President and Congress thirty six months after the date of the appointment of the members of the Commission and such appointments being made within 180 days after Nov. 1, 1977, and the Commission to cease to exist thirty days after submission of the report.

DEFINITION OF ''SECRETARY''

Section 6 of act Aug. 12, 1955, provided that: ''The term 'Secretary' as used in this Act and in amendments made by this Act [amending this section and sections 205, 206, 208, and 210 of this title] means the Secretary of Labor.''

§205. Special industry committees for American Samoa

(a) Establishment; residents as members of committees

The Administrator shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 206 of this title to employees in American Samoa 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 Administrator may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under said section 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 American Samoa where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of American Samoa. 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 208 of this title.

(b) Appointment of committee without regard to other laws pertaining to the appointment and compensation of employees of the United States; composition of committees

An industry committee shall be appointed by the Administrator 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 Administrator 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 Administrator shall give due regard to the geographical regions in which the industry is carried on.

(c) Quorum; compensation; employees

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 Administrator 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 Administrator 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) Submission of data to committees

The Administrator 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 Administrator to furnish additional information to aid it in its deliberations.

(June 25, 1938, ch. 676, § 5, 52 Stat. 1062; June 26, 1940, ch. 432, § 3(c), 54 Stat. 615; Oct. 26, 1949, ch. 736, § 5, 63 Stat. 911; Aug. 12, 1955, ch. 867, § 5(a), 69 Stat. 711; Pub. L. 87–30, § 4, May 5, 1961, 75 Stat. 67; Pub. L. 93–259, § 5(a), Apr. 8, 1974, 88 Stat. 56; Pub. L. 101–157, § 4(a), Nov. 17, 1989, 103 Stat. 939.)

AMENDMENTS

1989—Pub. L. 101–157, § 4(a)(4), substituted ''American Samoa'' for ''Puerto Rico and the Virgin Islands'' in section catchline.

Subsec. (a). Pub. L. 101–157, § 4(a)(1), (2), substituted ''American Samoa engaged'' for ''Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged'', ''American Samoa where'' for ''such island or islands where'', and ''American Samoa.'' for ''Puerto Rico and the Virgin Islands.''

Subsec. (e). Pub. L. 101–157, § 4(a)(3), struck out subsec. (e) which related to the application of sections 206 and 208 to employees in Puerto Rico or the Virgin Islands.

1974—Subsec. (e). Pub. L. 93–259 added subsec. (e).

1961—Subsec. (a). Pub. L. 87–30 inserted ''or employed in any enterprise engaged in commerce or in the production of goods for commerce'' after ''production of goods for commerce'' in two places.

1955—Subsec. (a). Act Aug. 12, 1955, struck out provisions which subjected the Administrator to provisions of section 208 of this title in determination of minimum rates of wages and classifications.

1949—Act Oct. 26, 1949, amended section generally, making it applicable only to Puerto Rico and the Virgin Islands.

1940—Subsec. (e). Joint Res. June 26, 1940, added subsec. (e).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87–30, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Labor and functions of all agencies and employees of that Department, with exception of functions vested by Administrative Procedure Act (now covered by sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by Department, transferred to Secretary of Labor, with power vested in him to authorize their performance or performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

DEFINITION OF ''ADMINISTRATOR''

The term ''Administrator'' as meaning the Administrator of the Wage and Hour Division, see section 204 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 206, 208 of this title.

§ 206. Minimum wage

(a) Employees engaged in commerce; home workers in Puerto Rico and Virgin Islands; employees in American Samoa; seamen on American vessels; agricultural employees

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) except as otherwise provided in this section, not less than $4.25 an hour during the period ending on September 30, 1996, not less than $4.75 an hour during the year beginning on October 1, 1996, and not less than $5.15 an hour beginning September 1, 1997;

(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 Administrator, 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) of this section, 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 pursuant to sections 205 and 208 of this title. 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 the minimum wage rate in effect under paragraph (1) after December 31, 1977.

(b) Additional applicability to employees pursuant to subsequent amendatory provisions

Every employer shall pay to each of his employees (other than an employee to whom subsection (a)(5) of this section 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 chapter by the Fair Labor Standards Amendments of 1966; title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or the Fair Labor Standards Amendments of 1974, wages at the following rate: Effective after December 31, 1977, not less than the minimum wage rate in effect under subsection (a)(1) of this section.

(c) Repealed. Pub. L. 104–188, [title II], §2104(c), Aug. 20, 1996, 110 Stat. 1929

(d) Prohibition of sex discrimination

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

(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) Employees of employers providing contract services to United States

(1) Notwithstanding the provisions of section 213 of this title (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 213 of this title (except subsections (a)(1) and (f) thereof) and the provisions of the Service Contract Act of 1965 [41 U.S.C. 351 et seq.] 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) of this section, 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) Employees in domestic service

Any employee—

(1) who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under subsection (b) of this section unless such employee's compensation for such service would not because of section 209(a)(6) of the Social Security Act [42 U.S.C. 409(a)(6)] constitute wages for the purposes of title II of such Act [42 U.S.C. 401 et seq.], or

(2) who in any workweek—

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

(B) is so employed for more than 8 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 subsection (b) of this section.

(g) Newly hired employees who are less than 20 years old

(1) In lieu of the rate prescribed by subsection (a)(1) of this section, any employer may pay any employee of such employer, during the first 90 consecutive calendar days after such employee is initially employed by such employer, a wage which is not less than $4.25 an hour.

(2) No employer may take any action to displace employees (including partial displacements such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the wage authorized in paragraph (1).

(3) Any employer who violates this subsection shall be considered to have violated section 215(a)(3) of this title.

(4) This subsection shall only apply to an employee who has not attained the age of 20 years.

(June 25, 1938, ch. 676, §6, 52 Stat. 1062; June 26, 1940, ch. 432, §3(e), (f), 54 Stat. 616; Oct. 26, 1949,

ch. 736, § 6, 63 Stat. 912; Aug. 12, 1955, ch. 867, § 3, 69 Stat. 711; Aug. 8, 1956, ch. 1035, § 2, 70 Stat. 1118; Pub. L. 87–30, § 5, May 5, 1961, 75 Stat. 67; Pub. L. 88–38, § 3, June 10, 1963, 77 Stat. 56; Pub. L. 89–601, title III, §§ 301–305, Sept. 23, 1966, 80 Stat. 838, 839, 841; Pub. L. 93–259, §§ 2–4, 5(b), 7(b)(1), Apr. 8, 1974, 88 Stat. 55, 56, 62; Pub. L. 95–151, § 2(a)–(d)(2), Nov. 1, 1977, 91 Stat. 1245, 1246; Pub. L. 101–157, §§ 2, 4(b), Nov. 17, 1989, 103 Stat. 938, 940; Pub. L. 101–239, title X, § 10208(d)(2)(B)(i), Dec. 19, 1989, 103 Stat. 2481; Pub. L. 104–188, [title II], §§ 2104(b), (c), 2105(c), Aug. 20, 1996, 110 Stat. 1928, 1929.)

REFERENCES IN TEXT

The Fair Labor Standards Amendments of 1966, referred to in subsec. (b), is Pub. L. 89–601, Sept. 23, 1966, 80 Stat. 830. For complete classification of this Act to the Code, see Short Title of 1966 Amendment note set out under section 201 of this title and Tables.

The Education Amendments of 1972, referred to in subsec. (b), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended, Title IX of the Education Amendments of 1972 is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title of 1972 Amendment note set out under section 1001 of Title 20 and Tables.

The Fair Labor Standards Amendments of 1974, referred to in subsec. (b), is Pub. L. 93–259, Apr. 8, 1974, 88 Stat. 55. For complete classification of this Act to the Code, see Short Title of 1974 Amendment note set out under section 201 of this title and Tables.

The Service Contract Act of 1965, referred to in subsec. (e)(1), (2), is Pub. L. 89–286, Oct. 22, 1965, 79 Stat. 1034, as amended, which is classified generally to chapter 6 (§ 351 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 351 of Title 41 and Tables.

The Social Security Act, referred to in subsec. (f)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of such Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–188, § 2104(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''except as otherwise provided in this section, not less than $3.35 an hour during the period ending March 31, 1990, not less than $3.80 an hour during the year beginning April 1, 1990, and not less than $4.25 an hour after March 31, 1991;''.

Subsec. (c). Pub. L. 104–188, § 2104(c), struck out subsec. (c) which related to employees in Puerto Rico.

Subsec. (g). Pub. L. 104–188, § 2105(c), added subsec. (g).

1989—Subsec. (a)(1). Pub. L. 101–157, § 2, amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''not less than $2.65 an hour during the year beginning January 1, 1978, not less than $2.90 an hour during the year beginning January 1, 1979, not less than $3.10 an hour during the year beginning January 1, 1980, and not less than $3.35 an hour after December 31, 1980, except as otherwise provided in this section;''.

Subsec. (a)(3). Pub. L. 101–157, § 4(b)(1), substituted ''pursuant to sections 205 and 208 of this title'' for ''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 chapter 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 chapter to employees employed in American Samoa as pertain to special industry committees established under section 205 of this title with respect to employees employed in Puerto Rico or the Virgin Islands''.

Subsec. (c). Pub. L. 101–157, § 4(b)(2), amended subsec. (c) generally, substituting provisions relating to the application of wage rates under subsec. (a)(1) to employees in Puerto Rico for provisions relating to the superseding of subsec. (a)(1) wage rates by wage orders of a special industry committee for employees in Puerto Rico and the Virgin Islands.

Subsec. (f)(1). Pub. L. 101–239 substituted ''209(a)(6)'' for ''209(g)''.

1977—Subsec. (a)(1). Pub. L. 95–151, § 2(a), substituted ''not less than $2.65 an hour during the year beginning January 1, 1978, not less than $2.90 an hour during the year beginning January 1, 1979, not less than $3.10 an hour during the year beginning January 1, 1980, and not less than $3.35 an hour after December 1, 1980'' for ''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''.

Subsec. (a)(5). Pub. L. 95–151, § 2(b), substituted provisions for a minimum wage rate of not less than the minimum wage rate in effect under par. (1) after Dec. 31, 1977, for provisions for a minimum wage rate of not less than $1.60 an hour during the period ending Dec. 31, 1974, $1.80 an hour during the year beginning Jan. 1, 1975, $2 an hour during the year beginning Jan. 1, 1976, $2.20 an hour during the year beginning Jan. 1, 1977, and $2.30 an hour after Dec. 31, 1977.

Subsec. (b). Pub. L. 95–151, § 2(c), substituted provisions for a minimum wage rate, effective after Dec. 31, 1977, of not less than the minimum wage rate in effect under subsec. (a)(1) of this section, for provisions for a minimum wage rate of not less than $1.90 an hour during the period ending Dec. 31, 1974, not less than $2 an hour during the year beginning Jan. 1, 1975, not less than $2.20 an hour during the year beginning Jan. 1, 1976, and not less than $2.30 an hour after Dec. 31, 1976.

Subsec. (c)(1). Pub. L. 95–151, § 2(d)(2)(A), inserted ''(A)'' before ''heretofore'' and cl. (B), and substituted ''subsection (a)(1)'' for ''subsections (a) and (b)''.

Subsec. (c)(2). Pub. L. 95–151, § 2(d)(1), added par. (2). Former par. (2), relating to applicability, etc., of wage rate orders effective on the effective date of the Fair Labor Standards Amendments of 1974, and effective on the first day of the second and each subsequent year after such date, was struck out.

Subsec. (c)(3). Pub. L. 95–151, § 2(d)(1), (2)(B), (C), redesignated par. (5) as (3) and substituted references to subsec. (a)(1) of this section, for references to subsec. (a) or (b) of this section. Former par. (3), relating to appointment of a special industry committee for recommendations with respect to highest minimum wage rates for employees employed in Puerto Rico or the Virgin Islands subject to the amendments to this chapter by the Fair Labor Standards Amendments of 1974, was struck out.

Subsec. (c)(4). Pub. L. 95–151, § 2(d)(1), (2)(B), (D), redesignated par. (6) as (4) and struck out ''or (3)'' after ''(2)''. Former par. (4), relating to wage rates of employees in Puerto Rico or the Virgin Islands subject to the former provisions of subsec. (c)(2)(A) or (3) of this section, was struck out.

Subsec. (c)(5), (6). Pub. L. 95–151, § 2(d)(2)(B), redesignated pars. (5) and (6) as (3) and (4), respectively.

1974—Subsec. (a)(1). Pub. L. 93–259, § 2, substituted ''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'' for ''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''.

Subsec. (a)(5). Pub. L. 93–259, § 4, substituted provisions for a minimum wage rate not less than: $1.60 an hour during period ending Dec. 31, 1974; $1.80, $2, and $2.20 an hour during years beginning Jan. 1, 1975, 1976, and 1977, respectively; and $2.30 an hour after Dec. 31, 1977 for former provisions for a minimum wage rate not less than $1 an hour during first year from the effective date of the Fair Labor Standards Amendments of 1966,

not less than $1.15 an hour during second year from such date, and not less than $1.30 an hour thereafter.

Subsec. (b). Pub. L. 93–259, §3, inserted references to ''title II of the Education Amendments of 1972'' and ''Fair Labor Standards Amendments of 1974'' and substituted provisions for a minimum wage rate not less than $1.90 an hour during period ending Dec. 31, 1974; $2 and $2.20 an hour during years beginning Jan. 1, 1975, and 1976, respectively; and $2.30 an hour after Dec. 31, 1976 for former provisions for a minimum wage rate not less than: $1 an hour during first year from effective date of Fair Labor Standards Amendments of 1966; $1.15, $1.30, and $1.45 an hour during second, third, and fourth years from such date; and $1.60 an hour thereafter.

Subsec. (c)(2) to (6). Pub. L. 93–259, §5(b), added pars. (2) to (6) and struck out former pars. (2) to (4) which had provided:

''(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) of this section 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 therefore issued by the Secretary pursuant to the recommendations of a special industry committee appointed under section 205 of this title, 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 on 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) of this section 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 205 of this title to recommend the highest minimum wage rate or rates in accordance with the standards prescribed by section 208 of this title, but not in excess of the applicable rate provided by subsection (a)(5) or subsection (b) of this section, to be applicable to such employee in lieu of the rate or rates prescribed by subsection (a)(5) or subsection (b) of this section, 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 sections 205 and 208 of this title, 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 208 of this title, 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) of this section) hereafter issued by the Secretary pursuant to the recommendation of a special industry committee.''

Subsec. (f). Pub. L. 93–259, §7(b)(1), added subsec. (f).

1966—Subsec. (a). Pub. L. 89–601, §301(a), inserted '', or is employed in an enterprise engaged in commerce or in the production of goods for commerce,'' in opening provisions.

Subsec. (a)(1). Pub. L. 89–601, §301(a), raised minimum wage to not less than $1.40 an hour during first year from the effective date of the Fair Labor Standards Amendments of 1966, and not less than $1.60 thereafter, except as otherwise provided in this section.

Subsec. (a)(4). Pub. L. 89–601, §301(b), added par. (4).

Subsec. (a)(5). Pub. L. 89–601, §302, added par. (5).

Subsec. (b). Pub. L. 89–601, §303, substituted provisions for a minimum wage for employees covered for first time by the Fair Labor Standards Amendments of 1966 (other than newly covered agricultural employees) at not less than $1 an hour during first year from the effective date of the 1966 amendments, not less than $1.15 an hour during second year from such date, not less than $1.30 an hour during third year from such date, not less than $1.45 an hour during fourth year from such date, and not less than $1.60 an hour there-

after, for provisions setting a timetable for increases in the minimum wage of employees first covered by the Fair Labor Standards Amendments of 1961.

Subsec. (c). Pub. L. 89–601, § 304, provided for a percentage minimum wage increase for employees in Puerto Rico and the Virgin Islands who are covered by wage orders already in effect as the equivalent of the percentage increase on the mainland, provided for minimum wages for employees brought within coverage of this chapter for the first time by the Fair Labor Standards Amendments of 1966 at rates to be set by special industry committees so as to reach as rapidly as is economically feasible without substantially curtailing employment the objectives of the minimum wage prescribed for mainland employees, and eliminated the review committees that has been established by the Fair Labor Standards Amendments of 1961.

Subsec. (e). Pub. L. 89–601, § 305, added subsec. (e).

1963—Subsec. (d). Pub. L. 88–38 added subsec. (d).

1961—Subsec. (a). Pub. L. 87–30, § 5(a)(1), inserted ''in any workweek'' in opening provisions.

Subsec. (a)(1). Pub. L. 87–30, § 5(a)(2), increased minimum wage from not less than $1 an hour to not less than $1.15 an hour during first two years from the effective date of the Fair Labor Standards Amendments of 1961, and not less than $1.25 an hour thereafter.

Subsec. (a)(3). Pub. L. 87–30, § 5(a)(3), inserted ''in lieu of the rate or rates provided by this subsection or subsection (b) of this section'' and ''as amended from time to time'' and struck out ''now'' before ''applicable to''.

Subsec. (b). Pub. L. 87–30, § 5(b), added subsec. (b). Former subsec. (b) had provided that ''This section shall take effect upon the expiration of one hundred and twenty days from June 25, 1938.''

Subsec. (c). Pub. L. 87–30, § 5(c), added subsec. (c). Former subsec. (c) had provided for wage orders recommended by special industrial committees and covering employees in Puerto Rico and the Virgin Islands to supersede minimum wages of $1 an hour and for continuance of wage orders in effect prior to effective date of this chapter until superseded by wage orders recommended by the special industrial committees.

1956—Subsec. (a)(3). Act Aug. 8, 1956, added par. (3).

1955—Subsec. (a)(1). Act Aug. 12, 1955, increased minimum wage from not less than 75 cents an hour to not less than $1 an hour.

1949—Subsec. (a). Act Oct. 26, 1949, § 6(a), (b), struck out subpars. (1), (2), (3), and (4), inserted subpar. (1) fixing the minimum wage rate at not less than 75 cents an hour, and redesignated subpar. (5) as (2).

Subsec. (c). Act Oct. 26, 1949, § 6(c), continued existing minimum wage rates in Puerto Rico and the Virgin Islands until superseded by special industry committee wage orders.

1940—Subsec. (a)(5). Act June 26, 1940, added par. (5).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–151 effective Jan. 1, 1978, see section 15(a) of Pub. L. 95–151, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by sections 2 to 4 and 7(b)(1) of Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

Section 5(b) of Pub. L. 93–259 provided that the amendment made by that section is effective Apr. 8, 1974.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–601 effective Feb. 1, 1967, except as otherwise provided, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT

Section 4 of Pub. L. 88–38 provided that: ''The amendments made by this Act [amending this section and enacting provisions set out below] shall take effect upon the expiration of one year from the date of its enactment [June 10, 1963]: *Provided*, That in the case of employees covered by a bona fide collective bargaining agreement in effect at least thirty days prior to the date of enactment of this Act [June 10, 1963], entered into by a labor organization as defined in section 6(d)(4) of the Fair Labor Standards Act of 1938, as amended [subsec. (d)(4) of this section], the amendments made by this Act shall take effect upon the termination of such collective bargaining agreement or upon the expiration of two years from the date of enactment of this Act [June 10, 1963], whichever shall first occur.''

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87–30, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Section 3 of act Aug. 12, 1955, provided that the amendment made by that section is effective Mar. 1, 1956.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

TRANSFER OF FUNCTIONS

Functions relating to enforcement and administration of equal pay provisions vested by this section in Secretary of Labor and Administrator of Wage and Hour Division of Department of Labor transferred to Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, § 1, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

Functions of all other officers of Department of Labor and functions of all agencies and employees of that Department, with exception of functions vested by Administrative Procedure Act (now covered by sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by Department, transferred to Secretary of Labor, with power vested in him to authorize their performance or performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

TRAINING WAGE

Section 6 of Pub. L. 101–157 provided that:

''(a) IN GENERAL.—

''(1) AUTHORITY.—Any employer may, in lieu of the minimum wage prescribed by section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206), pay an eligible employee the wage prescribed by paragraph (2)—

''(A) while such employee is employed for the period authorized by subsection (g)(1)(B)(i), or

''(B) while such employee is engaged in on-the-job training for the period authorized by subsection (g)(1)(B)(ii).

''(2) WAGE RATE.—The wage referred to in paragraph (1) shall be a wage—

''(A) of not less than $3.35 an hour during the year beginning April 1, 1990; and

''(B) beginning April 1, 1991, of not less than $3.35 an hour or 85 percent of the wage prescribed by section 6 of such Act, whichever is greater.

''(b) WAGE PERIOD.—An employer may pay an eligible employee the wage authorized by subsection (a) for a period that—

''(1) begins on or after April 1, 1990;

''(2) does not exceed the maximum period during which an employee may be paid such wage as determined under subsection (g)(1)(B); and

''(3) ends before April 1, 1993.

''(c) WAGE CONDITIONS.—No eligible employee may be paid the wage authorized by subsection (a) by an employer if—

''(1) any other individual has been laid off by such employer from the position to be filled by such eligible employee or from any substantially equivalent position; or

''(2) such employer has terminated the employment of any regular employee or otherwise reduced the number of employees with the intention of filling the vacancy so created by hiring an employee to be paid such wage.

''(d) LIMITATIONS.—

''(1) EMPLOYEE HOURS.—During any month in which employees are to be employed in an establishment under this section, the proportion of employee hours of employment to the total hours of employment of all employees in such establishment may not exceed a proportion equal to one-fourth of the total hours of employment of all employees in such establishment.

''(2) DISPLACEMENT.—

''(A) PROHIBITION.—No employer may take any action to displace employees (including partial displacements such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the wage authorized in subsection (a).

''(B) DISQUALIFICATION.—If the Secretary determines that an employer has taken an action in violation of subparagraph (A), the Secretary shall issue an order disqualifying such employer from employing any individual at such wage.

''(e) NOTICE.—Each employer shall provide to any eligible employee who is to be paid the wage authorized by subsection (a) a written notice before the employee begins employment stating the requirements of this section and the remedies provided by subsection (f) for violations of this section. The Secretary shall provide to employers the text of the notice to be provided under this subsection.

''(f) ENFORCEMENT.—Any employer who violates this section shall be considered to have violated section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)). Sections 16 and 17 of such Act (29 U.S.C. 216 and 217) shall apply with respect to the violation.

''(g) DEFINITIONS.—For purposes of this section:

''(1) ELIGIBLE EMPLOYEE.—

''(A) IN GENERAL.—The term 'eligible employee' means with respect to an employer an individual who—

''(i) is not a migrant agricultural worker or a seasonal agricultural worker (as defined in paragraphs (8) and (10) of section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802(8) and (10)) without regard to subparagraph (B) of such paragraphs and is not a nonimmigrant described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a));

''(ii) has not attained the age of 20 years; and

''(iii) is eligible to be paid the wage authorized by subsection (a) as determined under subparagraph (B).

''(B) DURATION.—

''(i) An employee shall initially be eligible to be paid the wage authorized by subsection (a) until the employee has been employed a cumulative total of 90 days at such wage.

''(ii) An employee who has been employed by an employer at the wage authorized by subsection (a) for the period authorized by clause (i) may be employed by any other employer for an additional 90 days if the employer meets the requirements of subsection (h).

''(iii) The total period, as authorized by clauses (i) and (ii), that an employee may be paid the wage authorized by subsection (a) may not exceed 180 days.

''(iv) For purposes of this subparagraph, the term 'employer' means with respect to an employee an employer who is required to withhold payroll taxes for such employee.

''(C) PROOF.—

''(i) IN GENERAL.—An individual is responsible for providing the requisite proof of previous period or periods of employment with other employers. An employer's good faith reliance on the proof presented to the employer by an individual shall constitute a complete defense to a charge that the employer has violated subsection (b)(2) with respect to such individual.

''(ii) REGULATIONS.—The Secretary of Labor shall issue regulations defining the requisite proof required of an individual. Such regulations shall establish minimal requirements for requisite proof and may prescribe that an accurate list of the individual's employers and a statement of the dates and duration of employment with each employer constitute requisite proof.

''(2) ON-THE-JOB TRAINING.—The term 'on-the-job training' means training that is offered to an individual while employed in productive work that provides training, technical and other related skills, and personal skills that are essential to the full and adequate performance of such employment.

''(h) EMPLOYER REQUIREMENTS.—An employer who wants to employ employees at the wage authorized by subsection (a) for the period authorized by subsection (g)(1)(B)(ii) shall—

''(1) notify the Secretary annually of the positions at which such employees are to be employed at such wage,

''(2) provide on-the-job training to such employees which meets general criteria of the Secretary issued by regulation after consultation with the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor [now Committee on Education and the Workforce] of the House of Representatives and other interested persons,

''(3) keep on file a copy of the training program which the employer will provide such employees,

''(4) provide a copy of the training program to the employees,

''(5) post in a conspicuous place in places of employment a notice of the types of jobs for which the employer is providing on-the-job training, and

''(6) send to the Secretary on an annual basis a copy of such notice.

The Secretary shall make available to the public upon request notices provided to the Secretary by employers in accordance with paragraph (6).

''(i) REPORT.—The Secretary of Labor shall report to Congress not later than March 1, 1993, on the effectiveness of the wage authorized by subsection (a). The report shall include—

''(1) an analysis of the impact of such wage on employment opportunities for inexperienced workers;

''(2) any reduction in employment opportunities for experienced workers resulting from the employment of employees under such wage;

''(3) the nature and duration of the training provided under such wage; and

''(4) the degree to which employers used the authority to pay such wage.''

PRACTICE OF PUBLIC AGENCY IN TREATING CERTAIN INDIVIDUALS AS VOLUNTEERS PRIOR TO APRIL 15, 1986; LIABILITY

Certain public agencies not to be liable for violations of this section occurring before Apr. 15, 1986, with respect to services deemed by that agency to have been performed for it by an individual on a voluntary basis, see section 4(c) of Pub. L. 99–150, set out as a note under section 203 of this title.

EFFECT OF AMENDMENTS BY PUBLIC LAW 99–150 ON PUBLIC AGENCY LIABILITY RESPECTING ANY EMPLOYEE COVERED UNDER SPECIAL ENFORCEMENT POLICY

Amendment by Pub. L. 99–150 not to affect liability of certain public agencies under section 216 of this title

for violation of this section occurring before Apr. 15, 1986, see section 7 of Pub. L. 99–150, set out as a note under section 216 of this title.

INAPPLICABILITY TO NORTHERN MARIANA ISLANDS

Pursuant to section 503(c) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands with the United States of America, as set forth in Pub. L. 94–241, Mar. 24, 1976, 90 Stat. 263, set out as a note under section 1801 of Title 48, Territories and Insular Possessions, this section is inapplicable to the Northern Mariana Islands.

RULES, REGULATIONS, AND ORDERS PROMULGATED WITH REGARD TO 1966 AMENDMENTS

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89–601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89–601, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

CONGRESSIONAL FINDING AND DECLARATION OF POLICY

Section 2 of Pub. L. 88–38 provided that:

''(a) The Congress hereby finds that the existence in industries engaged in commerce or in the production of goods for commerce of wage differentials based on sex—

''(1) depresses wages and living standards for employees necessary for their health and efficiency;

''(2) prevents the maximum utilization of the available labor resources;

''(3) tends to cause labor disputes, thereby burdening, affecting, and obstructing commerce;

''(4) burdens commerce and the free flow of goods in commerce; and

''(5) constitutes an unfair method of competition.

''(b) It is hereby declared to be the policy of this Act [amending this section, and enacting provisions set out as notes under this section], through exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct the conditions above referred to in such industries.''

DEFINITION OF ''ADMINISTRATOR''

The term ''Administrator'' as meaning the Administrator of the Wage and Hour Division, see section 204 of this title.

CROSS REFERENCES

Action by employee to recover unpaid minimum wages and liquidated damages, see section 216 of this title.

Employees performing services within foreign country or certain territory under jurisdiction of United States as not subject to provisions of this section, see section 213 of this title.

Hours worked defined, see section 203 of this title.

Minimum wages for employees covered by Walsh-Healey Act, see section 35 of Title 41, Public Contracts.

Minimum wages of employees of Government contractors prescribed by Davis-Bacon Act, see section 276a of Title 40, Public Buildings, Property, and Works.

Overtime pay, see section 207 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 203, 205, 207, 208, 213, 214, 215, 216, 218, 1552, 2617 of this title; title 2 sections 60k, 1313; title 3 section 413; title 5 sections 2302, 5343, 5349, 7702; title 7 sections 2015, 2026; title 10 section 1588; title 15 section 1673; title 20 sections 1078–10, 1085; title 21 section 849; title 22 sections 2506, 3905, 3967, 3968, 3969, 4131; title 24 section 422; title 26 section 45B; title 38 sections 1720, 3485; title 41 section 351; title 42 sections 300e–9, 431, 1437t, 2000e–2, 2753, 3056, 8009, 8011, 9848.

§ 207. Maximum hours

(a) Employees engaged in interstate commerce; additional applicability to employees pursuant to subsequent amendatory provisions

(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 chapter 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) Employment pursuant to collective bargaining agreement; employment by independently owned and controlled local enterprise engaged in distribution of petroleum products

No employer shall be deemed to have violated subsection (a) of this section 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) of this section 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 206 of this title,

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), (d) Repealed. Pub. L. 93–259, §19(e), Apr. 8, 1974, 88 Stat. 66

(e) "Regular rate" defined

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[1] 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 Administrator set forth in appropriate regulations 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 Administrator) 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 of 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) of this section 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) of this section,[2] 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) Employment necessitating irregular hours of work

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) of this section 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 rep-

[1] So in original. Probably should not be capitalized.

[2] So in original. The comma probably should be preceded by a closing parenthesis.

resentatives 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 206 of this title (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) Employment at piece rates

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

(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

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

(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: *Provided*, That the rate so established shall be authorized by regulation by the Administrator 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) of this section 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 creditable toward overtime compensation

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

(i) Employment by retail or service establishment

No employer shall be deemed to have violated subsection (a) of this section 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 206 of this title, 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) Employment in hospital or establishment engaged in care of sick, aged, or mentally ill

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) of this section if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of fourteen consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for his employment in excess of eight hours in any workday and in excess of eighty hours in such fourteen-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(k) Employment by public agency engaged in fire protection or law enforcement activities

No public agency shall be deemed to have violated subsection (a) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if—

(1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed the lesser of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975; or

(2) in the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 216 hours (or if lower, the number of hours referred to in clause (B) of paragraph (1)) bears to 28 days,

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

(*l*) Employment in domestic service in one or more households

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) of this section.

(m) Employment in tobacco industry

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) of this section without paying the compensation for overtime employment prescribed in such subsection, if such employee—

(1) is employed by such employer—

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

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

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

(2) receives for—

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

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

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

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

(n) Employment by street, suburban, or interurban electric railway, or local trolley or motorbus carrier

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) of this section 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.

(*o*) Compensatory time

(1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

(2) A public agency may provide compensatory time under paragraph (1) only—

(A) pursuant to—

(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

(ii) in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

(3)(A) If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

(B) If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than—

(A) the average regular rate received by such employee during the last 3 years of the employee's employment, or

(B) the final regular rate received by such employee,

whichever is higher[3]

(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency—

(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and

[3] So in original. Probably should be followed by a period.

(B) who has requested the use of such compensatory time,

shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

(6) The hours an employee of a public agency performs court reporting transcript preparation duties shall not be considered as hours worked for the purposes of subsection (a) of this section if—

(A) such employee is paid at a per-page rate which is not less than—

(i) the maximum rate established by State law or local ordinance for the jurisdiction of such public agency,

(ii) the maximum rate otherwise established by a judicial or administrative officer and in effect on July 1, 1995, or

(iii) the rate freely negotiated between the employee and the party requesting the transcript, other than the judge who presided over the proceedings being transcribed, and

(B) the hours spent performing such duties are outside of the hours such employee performs other work (including hours for which the agency requires the employee's attendance) pursuant to the employment relationship with such public agency.

For purposes of this section, the amount paid such employee in accordance with subparagraph (A) for the performance of court reporting transcript preparation duties, shall not be considered in the calculation of the regular rate at which such employee is employed.

(7) For purposes of this subsection—

(A) the term ''overtime compensation'' means the compensation required by subsection (a), and

(B) the terms ''compensatory time'' and ''compensatory time off'' mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

(p) Special detail work for fire protection and law enforcement employees; occasional or sporadic employment; substitution

(1) If an individual who is employed by a State, political subdivision of a State, or an interstate governmental agency in fire protection or law enforcement activities (including activities of security personnel in correctional institutions) and who, solely at such individual's option, agrees to be employed on a special detail by a separate or independent employer in fire protection, law enforcement, or related activities, the hours such individual was employed by such separate and independent employer shall be excluded by the public agency employing such individual in the calculation of the hours for which the employee is entitled to overtime compensation under this section if the public agency—

(A) requires that its employees engaged in fire protection, law enforcement, or security activities be hired by a separate and independent employer to perform the special detail,

(B) facilitates the employment of such employees by a separate and independent employer, or

(C) otherwise affects the condition of employment of such employees by a separate and independent employer.

(2) If an employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency undertakes, on an occasional or sporadic basis and solely at the employee's option, part-time employment for the public agency which is in a different capacity from any capacity in which the employee is regularly employed with the public agency, the hours such employee was employed in performing the different employment shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(3) If an individual who is employed in any capacity by a public agency which is a State, political subdivision of a State, or an interstate governmental agency, agrees, with the approval of the public agency and solely at the option of such individual, to substitute during scheduled work hours for another individual who is employed by such agency in the same capacity, the hours such employee worked as a substitute shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(q) Maximum hour exemption for employees receiving remedial education

Any employer may employ any employee for a period or periods of not more than 10 hours in the aggregate in any workweek in excess of the maximum workweek specified in subsection (a) of this section without paying the compensation for overtime employment prescribed in such subsection, if during such period or periods the employee is receiving remedial education that is—

(1) provided to employees who lack a high school diploma or educational attainment at the eighth grade level;

(2) designed to provide reading and other basic skills at an eighth grade level or below; and

(3) does not include job specific training.

(June 25, 1938, ch. 676, § 7, 52 Stat. 1063; Oct. 29, 1941, ch. 461, 55 Stat. 756; July 20, 1949, ch. 352, § 1, 63 Stat. 446; Oct. 26, 1949, ch. 736, § 7, 63 Stat. 912; Pub. L. 87–30, § 6, May 5, 1961, 75 Stat. 69; Pub. L. 89–601, title II, §§ 204(c), (d), 212(b), title IV, §§ 401–403, Sept. 23, 1966, 80 Stat. 835–837, 841, 842; Pub. L. 93–259, §§ 6(c)(1), 7(b)(2), 9(a), 12(b), 19, 21(a), Apr. 8, 1974, 88 Stat. 60, 62, 64, 66, 68; Pub. L. 99–150, §§ 2(a), 3(a)–(c)(1), Nov. 13, 1985, 99 Stat. 787, 789; Pub. L. 101–157, § 7, Nov. 17, 1989, 103 Stat. 944; Pub. L. 104–26, § 2, Sept. 6, 1995, 109 Stat. 264.)

REFERENCES IN TEXT

The Fair Labor Standards Amendments of 1966, referred to in subsec. (a)(2), is Pub. L. 89–601, Sept. 23, 1966, 80 Stat. 830. For complete classification of this Act to the Code, see Short Title of 1966 Amendment note set out under section 201 of this title and Tables.

The effective date of the Fair Labor Standards Amendments of 1966, referred to in subsec. (a)(2)(A), means the effective date of Pub. L. 89–601, which is Feb. 1, 1967 except as otherwise provided, see section 602 of Pub. L. 89–601, set out as an Effective Date of 1966 Amendment note under section 203 of this title.

Section 6(c)(3) of the Fair Labor Standards Amendments of 1974, referred to in subsec. (k)(1), is Pub. L. 93–259, §6(c)(3), Apr. 8, 1974, 88 Stat. 61, which is set out as a note under section 213 of this title.

AMENDMENTS

1995—Subsec. (*o*)(6), (7). Pub. L. 104–26 added par. (6) and redesignated former par. (6) as (7).

1989—Subsec. (q). Pub. L. 101–157 added subsec. (q).

1985—Subsec. (*o*). Pub. L. 99–150, §2(a), added subsec. (*o*).

Subsec. (p). Pub. L. 99–150, §3(a)–(c)(1), added subsec. (p).

1974—Subsec. (c). Pub. L. 93–259, §19(a), (b), substituted ''seven workweeks'' for ''ten workweeks'', ''ten workweeks'' for ''fourteen workweeks'' and ''forty-eight hours'' for ''fifty hours'' effective May 1, 1974. Pub. L. 93–259, §19(c), substituted ''five workweeks'' for ''seven workweeks'' and ''seven workweeks'' for ''ten workweeks'' effective Jan. 1, 1975. Pub. L. 93–259, §19(d), substituted ''three workweeks'' for ''five workweeks'' and ''five workweeks'' for ''seven workweeks'' effective Jan. 1, 1976. Pub. L. 93–259, §19(e), repealed subsec. (c) effective Dec. 31, 1976.

Subsec. (d). Pub. L. 93–259, §19(a), (b), substituted ''seven workweeks'' for ''ten workweeks'', ''ten workweeks'' for ''fourteen workweeks'' and ''forty-eight hours'' for ''fifty hours'' effective May 1, 1974. Pub. L. 93–259, §19(c), substituted ''five workweeks'' for ''seven workweeks'' and ''seven workweeks'' for ''ten workweeks'' effective Jan. 1, 1975. Pub. L. 93–259, §19(d), substituted ''three workweeks'' for ''five workweeks'' and ''five workweeks'' for ''seven workweeks'' effective Jan. 1, 1976. Pub. L. 93–259, §19(e), repealed subsec. (d) effective Dec. 31, 1976.

Subsec. (j). Pub. L. 93–259, §12(b), extended provision excepting from being considered a subsec. (a) violation agreements or undertakings between employers and employees respecting consecutive work period and overtime compensation to agreements between employers engaged in operation of 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 and employees respecting consecutive work period and overtime compensation.

Subsec. (k). Pub. L. 93–259, §6(c)(1)(D), effective Jan. 1, 1978, substituted in par. (1) ''exceed the lesser of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975'' for ''exceed 216 hours'' and inserted in par. (2) ''(or if lower, the number of hours referred to in clause (B) of paragraph (1)''.

Pub. L. 93–259, §6(c)(1)(C), substituted ''216 hours'' for ''232 hours'', wherever appearing, effective Jan. 1, 1977.

Pub. L. 93–259, §6(c)(1)(B), substituted ''232 hours'' for ''240 hours'', wherever appearing, effective Jan. 1, 1976.

Pub. L. 93–259, §6(c)(1)(A), added subsec. (k), effective Jan. 1, 1975.

Subsec. (*l*). Pub. L. 93–259, §7(b)(2), added subsec. (*l*).

Subsec. (m). Pub. L. 93–259, §9(a), added subsec. (m).

Subsec. (n). Pub. L. 93–259, §21(a), added subsec. (n).

1966—Subsec. (a). Pub. L. 89–601, §401, retained provision for 40-hour workweek and compensation for employment in excess of 40 hours at not less than one and one-half times the regular rate of pay and substituted provisions setting out a phased timetable for the workweek in the case of employees covered by the overtime provisions for the first time under the Fair Labor Standards Amendments of 1966 beginning at 44 hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966, 42 hours during the second year from such date, and 40 hours after the expiration of the second year from such date, for provisions giving a phased timetable for workweeks in the case of employees first covered under the provisions of the Fair Labor Standards Amendments of 1961.

Subsec. (b)(3). Pub. L. 89–601, §212(b), substituted provisions granting an overtime exemption for petroleum distribution employees if they receive compensation for the hours of employment in excess of 40 hours in any workweek at a rate not less than one and one-half times the applicable minimum wage rate and if the enterprises do an annual gross sales volume of less than $1,000,000, if more than 75 per centum of such enterprise's annual dollar volume of sales is made within the state in which the enterprise is located, and not more than 25 per centum of the annual dollar volume is to customers who are engaged in the bulk distribution of such products for resale for provisions covering employees for a period of not more than 14 workweeks in the aggregate in any calendar year in an industry found to be of a seasonal nature.

Subsec. (c). Pub. L. 89–601, §204(c), substituted provisions for an overtime exemption of 10 weeks in any calendar year or 14 weeks in the case of an employer not qualifying for the exemption in subsec. (d) of this section, limited to 10 hours a day and 50 hours a week, applicable to employees employed in seasonal industries which are not engaged in agricultural processing, for provisions granting a year-round unlimited exemption applicable to employees of employers engaged in first processing of milk into dairy products, cotton compressing and ginning, cottonseed processing, and the processing of certain farm products into sugar, and granting a 14-week unlimited exemption applicable to employees of employers engaged in first processing of perishable or seasonal fresh fruits or vegetables first processing within the area of production of any agricultural commodity during a seasonal operation, or the handling or slaughtering of livestock and poultry.

Subsec. (d). Pub. L. 89–601, §204(c), added subsec. (d). Former subsec. (d) redesignated (e).

Subsecs. (e), (f). Pub. L. 89–601, §204(d)(1), redesignated former subsecs. (d) and (e) as (e) and (f) respectively. Former subsec. (f) redesignated (g).

Subsecs. (g), (h). Pub. L. 89–601, §204(d)(1), (2), redesignated former subsecs. (f) and (g) as subsecs. (g) and (h) respectively, and in subsecs. (g) and (h) as so redesignated, substituted reference to ''subsection (e)'' for reference to ''subsection (d).'' Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 89–601, §§204(d)(1), 402, redesignated former subsec. (h) as (i) and inserted provision that, 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.

Subsec. (j). Pub. L. 89–601, §403, added subsec. (j).

1961—Subsec. (a). Pub. L. 87–30, §6(a), designated existing provisions as par. (1), inserted ''in any workweek'', and added par. (2).

Subsec. (b)(2). Pub. L. 87–30, §6(b), substituted ''in excess of the maximum workweek applicable to such employee under subsection (a) of this section'' for ''in excess of forty hours in the workweek''.

Subsec. (d)(5), (7). Pub. L. 87–30, §6(c), (d), substituted ''in excess of the maximum workweek applicable to such employee under subsection (a) of this section'' for ''forty in a workweek'' in par. (5) and ''the maximum workweek applicable to such employee under subsection (a) of this section'' for ''forty hours'' in par. (7).

Subsec. (e). Pub. L. 87–30, §6(e), substituted ''the maximum workweek applicable to such employee under subsection (a) of this section'', ''subsection (a) or (b) of section 206 of this title (whichever may be applicable'' and ''such maximum'' for ''forty hours'', ''section 206(a) of this title'' and ''forty in any'', respectively.

Subsec. (f). Pub. L. 87–30, §6(f), substituted ''the maximum workweek applicable to such employee under subsection'' for ''forty hours'' in two places.

Subsec. (h). Pub. L. 87–30, § 6(g), added subsec. (h).

1949—Subsec. (a). Act Oct. 26, 1949, continued requirement that employment in excess of 40 hours in a workweek be compensated at rate not less than 1½ times regular rate except as to employees specifically exempted.

Subsec. (b)(1). Act Oct. 26, 1949, increased employment period limitation from one thousand hours to one thousand and forty hours in semi-annual agreements.

Subsec. (b)(2). Act Oct. 26, 1949, increased employment period limitation from two thousand and eighty hours to two thousand two hundred and forty hours in annual agreements, fixed minimum and maximum guaranteed employment periods, and provided for overtime rate for hours worked in excess of the guaranty.

Subsec. (c). Act Oct. 26, 1949, added buttermilk to commodities listed for first processing.

Subsec. (d). Act Oct. 26, 1949, struck out former subsec. (d) and inserted a new subsec. (d) defining regular rate with certain specified types of payments excepted.

Subsec. (e) added by act July 20, 1949, and amended by act Oct. 26, 1949, which determined compensation to be paid for irregular hours of work.

Subsecs. (f) and (g). Act Oct. 26, 1949, added subsecs. (f) and (g).

1941—Subsec. (b)(2) amended by act Oct. 29, 1941.

EFFECTIVE DATE OF 1995 AMENDMENT

Section 3 of Pub. L. 104–26 provided that: ''The amendments made by section 2 [amending this section] shall apply after the date of the enactment of this Act [Sept. 6, 1995] and with respect to actions brought in a court after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–150 effective Apr. 15, 1986, see section 6 of Pub. L. 99–150, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 6(c)(1)(A)–(D) of Pub. L. 93–259 provided that the amendments made by that section are effective Jan. 1, 1975, 1976, 1977, and 1978, respectively.

Amendment by sections 7(b)(2), 9(a), 12(b), 19(a), (b), and 21(a) of Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

Section 19(c)–(e) of Pub. L. 93–259 provided that the amendments and repeals made by that section are effective Jan. 1, 1975, Jan. 1, 1976, and Dec. 31, 1976, respectively.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–601 effective Feb. 1, 1967, except as otherwise provided, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87–30, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Labor and functions of all agencies and employees of that Department, with exception of functions vested by Administrative Procedure Act (now covered by sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by Department, transferred to Secretary of Labor, with power vested in him to authorize their performance or performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

COMPENSATORY TIME; COLLECTIVE BARGAINING AGREEMENTS IN EFFECT ON APRIL 15, 1986

Section 2(b) of Pub. L. 99–150 provided that: ''A collective bargaining agreement which is in effect on April 15, 1986, and which permits compensatory time off in lieu of overtime compensation shall remain in effect until its expiration date unless otherwise modified, except that compensatory time shall be provided after April 14, 1986, in accordance with section 7(*o*) of the Fair Labor Standards Act of 1938 (as added by subsection (a)) [29 U.S.C. 207(*o*)].''

DEFERMENT OF MONETARY OVERTIME COMPENSATION

Section 2(c)(2) of Pub. L. 99–150 provided that: ''A State, political subdivision of a State, or interstate governmental agency may defer until August 1, 1986, the payment of monetary overtime compensation under section 7 of the Fair Labor Standards Act of 1938 [29 U.S.C. 207] for hours worked after April 14, 1986.''

EFFECT OF AMENDMENTS BY PUBLIC LAW 99–150 ON PUBLIC AGENCY LIABILITY RESPECTING ANY EMPLOYEE COVERED UNDER SPECIAL ENFORCEMENT POLICY

Amendment by Pub. L. 99–150 not to affect liability of certain public agencies under section 216 of this title for violation of this section occurring before Apr. 15, 1986, see section 7 of Pub. L. 99–150, set out as a note under section 216 of this title.

RULES, REGULATIONS, AND ORDERS PROMULGATED WITH REGARD TO 1966 AMENDMENTS

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89–601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89–601, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

STUDY BY SECRETARY OF LABOR OF EXCESSIVE OVERTIME

Pub. L. 89–601, title VI, § 603, Sept. 23, 1966, 80 Stat. 844, directed Secretary of Labor to make a complete study of practices dealing with overtime payments for work in excess of forty hours per week and the extent to which such overtime work impeded the creation of new job opportunities in American industry and instructed him to report to the Congress by July 1, 1967, the findings of such survey with appropriate recommendations.

EX. ORD. NO. 9607. FORTY-EIGHT HOUR WARTIME WORKWEEK

Ex. Ord. No. 9607, Aug. 30, 1945, 10 F.R. 11191, provided:

By virtue of the authority vested in me by the Constitution and statutes as President of the United States it is ordered that Executive Order 9301 of February 9, 1943 [8 F.R. 1825] (formerly set out as note under this section), establishing a minimum wartime workweek of forty-eight hours, be, and it is hereby, revoked.

HARRY S TRUMAN.

DEFINITION OF ''ADMINISTRATOR''

The term ''Administrator'' as meaning the Administrator of the Wage and Hour Division, see section 204 of this title.

CROSS REFERENCES

Action by employee to recover unpaid overtime compensation and liquidated damages, see section 216 of this title.

American Samoa employees not subject to provisions of this section, see section 213 of this title.

Employees performing services within foreign country or certain territory under jurisdiction of United

States as not subject to provisions of this section, see section 213 of this title.

Forty-hour workweek for employees covered by Walsh-Healey Act, see section 35 of Title 41, Public Contracts.

Hours of labor on public works, see section 327 et seq. of Title 40, Public Buildings, Property, and Works.

Hours worked defined, see section 203 of this title.

Liability for overtime work performed prior to July 20, 1949, see section 216b of this title.

Preliminary and post-liminary activities not compensable, see section 254 of this title.

Rate of overtime for employees covered by Walsh-Healey Act, see section 40 of Title 41, Public Contracts.

Walsh-Healey Act inapplicable to employees entering into agreements with employees under paragraphs 1 or 2 of subsection (b) of this section, see section 35 of Title 41.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 203, 211, 213, 214, 215, 216, 216b, 218, 2611, 2617 of this title; title 2 section 1313; title 3 section 413; title 5 sections 5542, 5543, 5544, 6123, 6128; title 41 sections 35, 355.

§ 208. Wage orders in American Samoa

(a) Congressional policy; recommendation of wage rate by industry committee

The policy of this chapter with respect to industries or enterprises in American Samoa 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 rate which would apply in each such industry under paragraph (1) or (5) of section 206(a) of this title but for section 206(c)[1] of this title. The Administrator shall from time to time convene an industry committee or committees, appointed pursuant to section 205 of this title, and any such industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 206 of this title by employers in American Samoa 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, and who but for section 206(a)(3) of this title would be subject to the minimum wage requirements of section 206(a)(1) of this title. Minimum rates of wages established in accordance with this section which are not equal to the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) of section 206(a) of this title 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) Investigation of industry condition by industry committee; matters considered

Upon the convening of any such industry committee, the Administrator 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 chapter. The committee shall recommend to the Administrator 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 American Samoa a competitive advantage over any industry in the United States outside of American Samoa; except that the committee shall recommend to the Secretary the minimum wage rate prescribed in section 206(a) or 206(b) of this title, which would be applicable but for section 206(a)(3) of this title, unless there is evidence in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage due to such economic and competitive conditions.

(c) Classifications within industry; recommendation of wage rate

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 in effect under paragraph (1) or (5) of section 206(a) of this title (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 classification should be made in any industry, in making such classifications, and in determining the minimum wage rates for such classifications, no classifications shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee shall consider among other relevant factors the following:

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

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

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

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

(d) Report by industry committee; publication in Federal Register

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.

[1] See References in Text note below.

(e) Orders

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 Administrator 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 hearings by publication in Federal Register

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 Administrator deems reasonably calculated to give general notice to interested persons.

(June 25, 1938, ch. 676, § 8, 52 Stat. 1064; Oct. 26, 1949, ch. 736, § 8, 63 Stat. 915; Aug. 12, 1955, ch. 867, §§ 4, 5(b)–(e), 69 Stat. 711, 712; Pub. L. 85–750, Aug. 25, 1958, 72 Stat. 844; Pub. L. 87–30, § 7, May 5, 1961, 75 Stat. 70; Pub. L. 93–259, § 5(c)(1), (d), Apr. 8, 1974, 88 Stat. 58; Pub. L. 95–151, § 2(d)(3), Nov. 1, 1977, 91 Stat. 1246; Pub. L. 101–157, § 4(c), Nov. 17, 1989, 103 Stat. 940; Pub. L. 101–583, § 1, Nov. 15, 1990, 104 Stat. 2871.)

REFERENCES IN TEXT

Section 206(c) of this title, referred to in subsec. (a), was repealed by Pub. L. 104–188, title II, § 2104(c), Aug. 20, 1996, 110 Stat. 1929.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–583, which directed the substitution of ''unless there is evidence in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage due to such economic and competitive conditions'' for ''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'' in ''section 8(b) (29 U.S.C. 208(b))'', was executed by making the substitution in section 8(b) of the Fair Labor Standards Act of 1938, act June 25, 1938, ch. 676, which is classified to subsec. (b) of this section, to reflect the probable intent of Congress.

1989—Pub. L. 101–157, § 4(c)(5), substituted ''American Samoa'' for ''Puerto Rico and the Virgin Islands'' in section catchline.

Subsec. (a). Pub. L. 101–157, § 4(c), substituted ''American Samoa engaged'' for ''Puerto Rico and the Virgin Islands engaged'', struck out ''The Secretary shall, from time to time, convene an industry committee or committees, appointed pursuant to section 205 of this title, and any such industry committee—

''(1) shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico, in the Virgin Islands, or in both places and who but for section 206(c) of this title would be subject to the minimum wage requirements of section 206(a)(1) of this title, and

''(2) may, from time to time, recommend increases in the incremental increases authorized by section 206(c)(2) of this title.''

after ''section 206(c) of this title.'', substituted ''American Samoa engaged'' for ''Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged'' and inserted '', and who but for section 206(a)(3) of this title would be subject to the minimum wage requirements of section 206(a)(1) of this title''.

Subsec. (b). Pub. L. 101–157, § 4(c)(4), substituted ''American Samoa a competitive'' for ''Puerto Rico or in the Virgin Islands a competitive'', ''American Samoa; except'' for ''Puerto Rico and the Virgin Islands; except'', and ''section 206(a)(3) of this title'' for ''section 206(c) of this title''.

1977—Subsec. (a). Pub. L. 95–151 inserted provisions relating to appointment of industry committees by the Secretary and functions of such industry committees.

1974—Subsec. (a). Pub. L. 93–259, § 5(d)(1), (2), substituted in first sentence ''the minimum wage rate which would apply in each such industry under paragraph (1) or (5) of section 206(a) of this title but for section 206(c) of this title'' for ''the minimum wage prescribed in paragraph (1) of section 206(a) of this title in each such industry'' and in third sentence ''the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) of section 206(a) of this title'' for ''the minimum wage rate prescribed in paragraph (1) of section 206(a) of this title''.

Subsec. (b). Pub. L. 93–259, § 5(c)(1), required committee to recommend minimum wage rate prescribed in section 206(a) or 206(b) of this title, which would be applicable but for section 206(c) of this title, unless industry is unable to pay that wage as established by substantial documentary evidence or in case of employees of public agencies other appropriate information in the record.

Subsec. (c). Pub. L. 93–259, § 5(d)(3), substituted ''in effect under paragraph (1) or (5) of section 206(a) of this title (as the case may be)'' for ''prescribed in paragraph (1) of section 206(a) of this title''.

1961—Subsec. (a). Pub. L. 87–30 inserted ''or enterprises'' after ''industries'' in first sentence and ''or in any enterprise engaged in commerce or in the production of goods for commerce'' after ''production of goods for commerce'' in second sentence.

1958—Subsec. (a). Pub. L. 85–750 provided for biennial instead of an annual review of rates and for additional review, in Secretary's discretion, during any biennial period.

1955—Subsec. (a). Act Aug. 12, 1955, § 4, required review of minimum wage rates at least once each fiscal year.

Subsec. (b). Act Aug. 12, 1955, § 5(b), permitted industry committee or any authorized subcommittee to hear witnesses and receive evidence only after due notice.

Subsec. (c). Act Aug. 12, 1955, § 5(c), struck out provisions which applied to Administrator in determining classifications and minimum wage rates.

Subsec. (d). Act Aug. 12, 1955, § 5(d), struck out provisions which required hearings to be held on recommendations of industry committee, and inserted provisions requiring publication of recommendations and providing that such recommendations should take effect 15 days after date of publication.

Subsec. (e). Act Aug. 12, 1955, § 5(e), struck out provisions which required due notice of orders by publication in Federal Register and by other means as Administrator deemed reasonably calculated to give general notice to interested persons.

1949—Subsec. (a). Act Oct. 26, 1949, stated policy of chapter with regard to minimum wage rate of industries in Puerto Rico and Virgin Islands and limited application of section to such industries.

Subsec. (b). Act Oct. 26, 1949, required an industry committee in fixing minimum wage rates not to give a competitive advantage to industries in Puerto Rico and Virgin Islands over United States industries.

Subsec. (c). Act Oct. 26, 1949, struck out ''for any industry'' before ''shall recommend'' and substituted ''that prescribed in paragraph (1) of section 206(a) of this title'' for ''40 cents an hour'' within parenthesis in first sentence.

Subsec. (d). Act Oct. 26, 1949, reenacted subsec. (d) without change.

Subsecs. (e) to (g). Act Oct. 26, 1949, struck out subsec. (e) and redesignated subsecs. (f) and (g) as (e) and (f), respectively.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–151 effective Jan. 1, 1978, see section 15(a) of Pub. L. 95–151, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87–30, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Section 4 of act Aug. 12, 1955, provided that the amendment made by that section is effective July 1, 1956.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Labor and functions of all agencies and employees of that Department, with exception of functions vested by Administrative Procedure Act (now covered by sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by Department, transferred to Secretary of Labor, with power vested in him to authorize their performance or performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

ORDERS, REGULATIONS, INTERPRETATIONS OR AGREEMENTS PRIOR TO 1949 AMENDMENTS

Section 16(c) of act Oct. 26, 1949, provided that: ''Any order, regulation, or interpretation of the Administrator of the Wage and Hour Division or of the Secretary of Labor, and any agreement entered into by the Administrator or the Secretary, in effect under the provisions of the Fair Labor Standards Act of 1938, as amended [this chapter], on the effective date of this Act [ninety days from Oct. 26, 1949], shall remain in effect as an order, regulation, interpretation, or agreement of the Administrator or the Secretary, as the case may be, pursuant to this Act, except to the extent that any such order, regulation, interpretation, or agreement may be inconsistent with the provisions of this Act, or may from time to time be amended, modified, or rescinded by the Administrator or the Secretary, as the case may be, in accordance with the provisions of this Act.''

WAGE ORDERS ISSUED PRIOR TO JUNE 26, 1940, IN PUERTO RICO OR THE VIRGIN ISLANDS

Joint Res. June 26, 1940, ch. 432, §3(d), 54 Stat. 616, provided as follows: ''No wage orders issued by the Administrator pursuant to the recommendations of an industry committee made prior to the enactment of this joint resolution pursuant to section 8 (this section) of the Fair Labor Standards Act of 1938 shall after such enactment be applicable with respect to any employees engaged in commerce or in the production of goods for commerce in Puerto Rico or the Virgin Islands.''

DEFINITION OF ''ADMINISTRATOR''

The term ''Administrator'' as meaning the Administrator of the Wage and Hour Division, see section 204 of this title.

DEFINITION OF ''SECRETARY''

The term ''Secretary'' as meaning the Secretary of Labor, see section 6 of act Aug. 12, 1955, set out as a note under section 204 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 205, 206, 210 of this title.

§209. Attendance of witnesses

For the purpose of any hearing or investigation provided for in this chapter, the provisions of sections 49 and 50 of title 15 (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Administrator, the Secretary of Labor, and the industry committees.

(June 25, 1938, ch. 676, §9, 52 Stat. 1065; 1946 Reorg. Plan No. 2, §1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095.)

TRANSFER OF FUNCTIONS

Functions relating to enforcement and administration of equal pay provisions vested by this section in Secretary of Labor and Administrator of Wage and Hour Division of Department of Labor transferred to Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, §1, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

Functions of all other officers of Department of Labor and functions of all agencies and employees of that Department, with exception of functions vested by Administrative Procedure Act (now covered by sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by Department, transferred to Secretary of Labor, with power vested in him to authorize their performance or performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

''Secretary of Labor'' substituted in text for ''Chief of the Children's Bureau'' by 1946 Reorg. Plan No. 2. See Transfer of Functions note set out under section 203 of this title.

DEFINITION OF ''ADMINISTRATOR''

The term ''Administrator'' as meaning the Administrator of the Wage and Hour Division, see section 204 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 626, 2616 of this title.

§210. Court review of wage orders in Puerto Rico and the Virgin Islands

(a) Any person aggrieved by an order of the Secretary issued under section 208 of this title may obtain a review of such order in the United States Court of Appeals for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within 60 days after the entry of such order a written petition praying that the order of the Secretary be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record of the industry committee upon which the order complained of was entered, as provided in section 2112 of title 28. 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.

(b) The commencement of proceedings under subsection (a) of this section shall not, unless specifically ordered by the court, operate as a stay of the Administrator'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.

(June 25, 1938, ch. 676, § 10, 52 Stat. 1065; Aug. 12, 1955, ch. 867, § 5(f), 69 Stat. 712; Pub. L. 85–791, § 22, Aug. 28, 1958, 72 Stat. 948; Pub. L. 93–259, § 5(c)(2), Apr. 8, 1974, 88 Stat. 58.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–259 inserted "(including provision for the payment of an appropriate minimum wage rate)" in third sentence after "modify".

1958—Subsec. (a). Pub. L. 85–791 substituted "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" for "served upon the Secretary, and thereupon the Secretary shall certify and file in the court a transcript of the record" in second sentence, and inserted "as provided in section 2112 of title 28", and substituted "petition" for "transcript" in third sentence.

1955—Subsec. (a). Act Aug. 12, 1955, amended subsec. (a) generally to make subsection conform to new procedure applicable to Puerto Rico and Virgin Islands.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

DEFINITION OF "ADMINISTRATOR"

The term "Administrator" as meaning the Administrator of the Wage and Hour Division, see section 204 of this title.

DEFINITION OF "SECRETARY"

The term "Secretary" as meaning the Secretary of Labor, see section 6 of act Aug. 12, 1955, set out as a note under section 204 of this title.

CROSS REFERENCES

Employees performing services within foreign country or certain territory under jurisdiction of United States as not subject to provisions of this section, see section 213 of this title.

§ 211. Collection of data

(a) Investigations and inspections

The Administrator 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 chapter, 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 chapter, or which may aid in the enforcement of the provisions of this chapter. Except as provided in section 212 of this title and in subsection (b) of this section, the Administrator 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 212 of this title, the Administrator shall bring all actions under section 217 of this title to restrain violations of this chapter.

(b) State and local agencies and employees

With the consent and cooperation of State agencies charged with the administration of State labor laws, the Administrator and the Secretary of Labor may, for the purpose of carrying out their respective functions and duties under this chapter, 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) Records

Every employer subject to any provision of this chapter or of any order issued under this chapter 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 Administrator as he shall prescribe by regulation or order as necessary or appropriate for

the enforcement of the provisions of this chapter or the regulations or orders thereunder. The employer of an employee who performs substitute work described in section 207(p)(3) of this title may not be required under this subsection to keep a record of the hours of the substitute work.

(d) Homework regulations

The Administrator 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 chapter, and all existing regulations or orders of the Administrator relating to industrial homework are continued in full force and effect.

(June 25, 1938, ch. 676, §11, 52 Stat. 1066; 1946 Reorg. Plan No. 2, §1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Oct. 26, 1949, ch. 736, §9, 63 Stat. 916; Pub. L. 99–150, §3(c)(2), Nov. 13, 1985, 99 Stat. 789.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99–150 inserted ''The employer of an employee who performs substitute work described in section 207(p)(3) of this title may not be required under this subsection to keep a record of the hours of the substitute work.''

1949—Subsec. (d). Act Oct. 26, 1949, added subsec. (d).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–150 effective Apr. 15, 1986, see section 6 of Pub. L. 99–150, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

TRANSFER OF FUNCTIONS

Functions relating to enforcement and administration of equal pay provisions vested by subsecs. (a), (b), and (c) of this section in Secretary of Labor and Administrator of Wage and Hour Division of Department of Labor transferred to Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, §1, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

''Secretary of Labor'' substituted for ''Chief of the Children's Bureau'' in subsec. (b) by 1946 Reorg. Plan No. 2. See note set out under section 203 of this title.

EFFECT OF AMENDMENTS BY PUBLIC LAW 99–150 ON PUBLIC AGENCY LIABILITY RESPECTING ANY EMPLOYEE COVERED UNDER SPECIAL ENFORCEMENT POLICY

Amendment by Pub. L. 99–150 not to affect liability of certain public agencies under section 216 of this title for violation of this section occurring before Apr. 15, 1986, see section 7 of Pub. L. 99–150, set out as a note under section 216 of this title.

DEFINITION OF ''ADMINISTRATOR''

The term ''Administrator'' as meaning the Administrator of the Wage and Hour Division, see section 204 of this title.

CROSS REFERENCES

Attendance of witnesses and production of books, papers, and documents, see section 209 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 212, 215, 626, 2616 of this title.

§212. Child labor provisions

(a) Restrictions on shipment of goods; prosecution; conviction

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) Investigations and inspections

The Secretary of Labor or any of his authorized representatives, shall make all investigations and inspections under section 211(a) of this title with respect to the employment of minors, and, subject to the direction and control of the Attorney General, shall bring all actions under section 217 of this title 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 chapter relating to oppressive child labor.

(c) Oppressive child labor

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) Proof of age

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.

(June 25, 1938, ch. 676, §12, 52 Stat. 1067; 1946 Reorg. Plan No. 2, §1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Oct. 26, 1949, ch. 736, §10, 63 Stat. 917; Pub. L. 87–30, §8, May 5, 1961, 75 Stat. 70; Pub. L. 93–259, §25(a), Apr. 8, 1974, 88 Stat. 72.)

AMENDMENTS

1974—Subsec. (d). Pub. L. 93–259 added subsec. (d).

1961—Subsec. (c). Pub. L. 87–30 inserted ''or in any enterprise engaged in commerce or in the production of goods for commerce''.

1949—Subsec. (a). Act Oct. 26, 1949, §10(a), struck out effective date at beginning of subsection and inserted

proviso excepting good faith purchaser of goods produced by oppressive child labor.

Subsec. (c). Act Oct. 26, 1949, § 10(b), added subsec. (c).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87–30, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

''Secretary of Labor'' substituted for ''Chief of the Children's Bureau in the Department of Labor'' in subsec. (b) by 1946 Reorg. Plan No. 2. See note set out under section 203 of this title.

CROSS REFERENCES

Employees performing services within foreign country or certain territory under jurisdiction of United States as not subject to provisions of this section, see section 213 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 211, 213, 215, 216 of this title; title 2 section 1313; title 3 section 413.

§ 213. Exemptions

(a) Minimum wage and maximum hour requirements

The provisions of sections 206 (except subsection (d) in the case of paragraph (1) of this subsection) and section 207 of this title 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 subchapter II of chapter 5 of title 5, 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) Repealed. Pub. L. 101–157, § 3(c)(1), Nov. 17, 1989, 103 Stat. 939.

(3) any employee employed by an establishment which is an amusement or recreational establishment organized camp, or religious or non-profit educational conference center, 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, except that the exemption from sections 206 and 207 of this title provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 206 of this title, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture; or

(4) Repealed. Pub. L. 101–157, § 3(c)(1), Nov. 17, 1989, 103 Stat. 939.

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

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock; or

(7) any employee to the extent that such employee is exempted by regulations, order, or certificate of the Secretary issued under section 214 of this title; 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) Repealed. Pub. L. 93–259, §23(a)(1), Apr. 8, 1974, 88 Stat. 69.

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

(11) Repealed. Pub. L. 93–259, §10(a), Apr. 8, 1974, 88 Stat. 63.

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

(13), (14) Repealed. Pub. L. 93–259, §§9(b)(1), 23(b)(1), Apr. 8, 1974, 88 Stat. 63, 69.

(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); or

(16) a criminal investigator who is paid availability pay under section 5545a of title 5; or

(17) any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty is—

(A) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

(B) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(C) the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or

(D) a combination of duties described in subparagraphs (A), (B), and (C) the performance of which requires the same level of skills, and

who, in the case of an employee who is compensated on an hourly basis, is compensated at a rate of not less than $27.63 an hour.

(b) Maximum hour requirements

The provisions of section 207 of this title 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 31502 of title 49; or

(2) any employee of an employer engaged in the operation of a rail carrier subject to part A of subtitle IV of title 49; or

(3) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act [45 U.S.C. 181 et seq.]; or

(4) Repealed. Pub. L. 93–259, §11(c), Apr. 8, 1974, 88 Stat. 64.

(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) Repealed. Pub. L. 93–259, §21(b)(3), Apr. 8, 1974, 88 Stat. 68.

(8) Repealed. Pub. L. 95–151, §14(b), Nov. 1, 1977, 91 Stat. 1252.

(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 Office of Management and 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)(A) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or

(B) any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers; or

(11) any employee employed as a driver or driver's 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 207(a) of this title; 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, at least 90 percent of which was ultimately delivered for agricultural purposes during the preceding calendar year; 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 206(a)(1) of this title; 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 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), (19) Repealed. Pub. L. 93–259, §§ 15(c), 16(b), Apr. 8, 1974, 88 Stat. 65.

(20) any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than 5 employees in fire protection or law enforcement activities, as the case may be; or

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

(22) Repealed. Pub. L. 95–151, § 5, Nov. 1, 1977, 91 Stat. 1249.

(23) Repealed. Pub. L. 93–259, § 10(b)(3), Apr. 8, 1974, 88 Stat. 64.

(24) any employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children—

(A) who are orphans or one of whose natural parents is deceased, or

(B) who are enrolled in such institution and reside in residential facilities of the institution,

while such children are in residence at such institution, if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than $10,000; or

(25), (26) Repealed. Pub. L. 95–151, §§ 6(a), 7(a), Nov. 1, 1977, 91 Stat. 1249, 1250.

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

(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;

(29) any employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System if such employee (A) is an employee of a private entity engaged in providing services or facilities in a national park or national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture, and (B) receives compensation for employment in excess of fifty-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

(30) a criminal investigator who is paid availability pay under section 5545a of title 5.

(c) Child labor requirements

(1) Except as provided in paragraph (2) or (4), the provisions of section 212 of this title 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 subsection (a)(6)(A) of this section) required to be paid at the wage rate prescribed by section 206(a)(5) of this title,

(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.

(2) The provisions of section 212 of this title relating to child labor shall apply to an employee below the age of sixteen employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

(3) The provisions of section 212 of this title relating to child labor shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.

(4)(A) An employer or group of employers may apply to the Secretary for a waiver of the application of section 212 of this title to the employment for not more than eight weeks in any calendar year of individuals who are less than twelve years of age, but not less than ten years of age, as hand harvest laborers in an agricultural operation which has been, and is customarily and generally recognized as being, paid on a piece rate basis in the region in which such individuals would be employed. The Secretary may not grant such a waiver unless he finds, based on objective data submitted by the applicant, that—

(i) the crop to be harvested is one with a particularly short harvesting season and the application of section 212 of this title would cause severe economic disruption in the industry of the employer or group of employers applying for the waiver;

(ii) the employment of the individuals to whom the waiver would apply would not be deleterious to their health or well-being;

(iii) the level and type of pesticides and other chemicals used would not have an adverse effect on the health or well-being of the individuals to whom the waiver would apply;

(iv) individuals age twelve and above are not available for such employment; and

(v) the industry of such employer or group of employers has traditionally and substantially employed individuals under twelve years of age without displacing substantial job opportunities for individuals over sixteen years of age.

(B) Any waiver granted by the Secretary under subparagraph (A) shall require that—

(i) the individuals employed under such waiver be employed outside of school hours for the school district where they are living while so employed;

(ii) such individuals while so employed commute daily from their permanent residence to the farm on which they are so employed; and

(iii) such individuals be employed under such waiver (I) for not more than eight weeks between June 1 and October 15 of any calendar year, and (II) in accordance with such other terms and conditions as the Secretary shall prescribe for such individuals' protection.

(5)(A) In the administration and enforcement of the child labor provisions of this chapter, employees who are 16 and 17 years of age shall be permitted to load materials into, but not operate or unload materials from, scrap paper balers and paper box compactors—

(i) that are safe for 16- and 17-year-old employees loading the scrap paper balers or paper box compactors; and

(ii) that cannot be operated while being loaded.

(B) For purposes of subparagraph (A), scrap paper balers and paper box compactors shall be considered safe for 16- or 17-year-old employees to load only if—

(i)(I) the scrap paper balers and paper box compactors meet the American National Standards Institute's Standard ANSI Z245.5–1990 for scrap paper balers and Standard ANSI Z245.2–1992 for paper box compactors; or

(II) the scrap paper balers and paper box compactors meet an applicable standard that is adopted by the American National Standards Institute after August 6, 1996, and that is certified by the Secretary to be at least as protective of the safety of minors as the standard described in subclause (I);

(ii) the scrap paper balers and paper box compactors include an on-off switch incorporating a key-lock or other system and the control of the system is maintained in the custody of employees who are 18 years of age or older;

(iii) the on-off switch of the scrap paper balers and paper box compactors is maintained in an off position when the scrap paper balers and paper box compactors are not in operation; and

(iv) the employer of 16- and 17-year-old employees provides notice, and posts a notice, on the scrap paper balers and paper box compactors stating that—

(I) the scrap paper balers and paper box compactors meet the applicable standard described in clause (i);

(II) 16- and 17-year-old employees may only load the scrap paper balers and paper box compactors; and

(III) any employee under the age of 18 may not operate or unload the scrap paper balers and paper box compactors.

The Secretary shall publish in the Federal Register a standard that is adopted by the American National Standards Institute for scrap paper balers or paper box compactors and certified by the Secretary to be protective of the safety of minors under clause (i)(II).

(C)(i) Employers shall prepare and submit to the Secretary reports—

(I) on any injury to an employee under the age of 18 that requires medical treatment (other than first aid) resulting from the employee's contact with a scrap paper baler or paper box compactor during the loading, operation, or unloading of the baler or compactor; and

(II) on any fatality of an employee under the age of 18 resulting from the employee's contact with a scrap paper baler or paper box compactor during the loading, operation, or unloading of the baler or compactor.

(ii) The reports described in clause (i) shall be used by the Secretary to determine whether or not the implementation of subparagraph (A) has had any effect on the safety of children.

(iii) The reports described in clause (i) shall provide—

(I) the name, telephone number, and address of the employer and the address of the place of employment where the incident occurred;

(II) the name, telephone number, and address of the employee who suffered an injury or death as a result of the incident;

(III) the date of the incident;

(IV) a description of the injury and a narrative describing how the incident occurred; and

(V) the name of the manufacturer and the model number of the scrap paper baler or paper box compactor involved in the incident.

(iv) The reports described in clause (i) shall be submitted to the Secretary promptly, but not later than 10 days after the date on which an incident relating to an injury or death occurred.

(v) The Secretary may not rely solely on the reports described in clause (i) as the basis for making a determination that any of the employers described in clause (i) has violated a provision of section 212 of this title relating to oppressive child labor or a regulation or order issued pursuant to section 212 of this title. The Secretary shall, prior to making such a determination, conduct an investigation and inspection in accordance with section 212(b) of this title.

(vi) The reporting requirements of this subparagraph shall expire 2 years after August 6, 1996.

(d) Delivery of newspapers and wreathmaking

The provisions of sections 206, 207, and 212 of this title shall not apply with respect to any em-

ployee 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) Maximum hour requirements and minimum wage employees

The provisions of section 207 of this title shall not apply with respect to employees for whom the Secretary of Labor is authorized to establish minimum wage rates as provided in section 206(a)(3) of this title, 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 207 of this title if he shall find, after a public hearing on the matter, and taking into account the factors set forth in section 206(a)(3) of this title, that economic conditions warrant such action.

(f) Employment in foreign countries and certain United States territories

The provisions of sections 206, 207, 211, and 212 of this title 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) [43 U.S.C. 1331 et seq.]; American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

(g) Certain employment in retail or service establishments, agriculture

The exemption from section 206 of this title provided by paragraph (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).

(h) Maximum hour requirement: fourteen workweek limitation

The provisions of section 207 of this title 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; or

(D) exclusively to provide services necessary and incidental to the processing of sugar cane or sugar beets in an establishment primarily engaged in the processing of sugar cane or sugar beets; and

(2) receives for—

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

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

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

Any employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section or section 207 of this title.

(i) Cotton ginning

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who—

(1) is engaged in the ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities; and

(2) receives for any such employment during such workweeks—

(A) in excess of ten hours in any workday, and

(B) 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. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

(j) Processing of sugar beets, sugar beet molasses, or sugar cane

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who—

(1) is engaged in the processing of sugar beets, sugar beet molasses, or sugar cane into sugar (other than refined sugar) or syrup; and

(2) receives for any such employment during such workweeks—

(A) in excess of ten hours in any workday, and

(B) 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. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

(June 25, 1938, ch. 676, §13, 52 Stat. 1067; Aug. 9, 1939, ch. 605, 53 Stat. 1266; Oct. 26, 1949, ch. 736, §11, 63 Stat. 917; Aug. 8, 1956, ch. 1035, §3, 70 Stat. 1118; Pub. L. 85–231, §1(1), Aug. 30, 1957, 71 Stat. 514; Pub. L. 86–624, §21(b), July 12, 1960, 74 Stat. 417; Pub. L. 87–30, §§9, 10, May 5, 1961, 75 Stat. 71, 74; Pub. L. 89–601, title II, §§201–204(a), (b), 205–212(a), 213, 214, 215(b), (c), Sept. 23, 1966, 80 Stat. 833–838; Pub. L. 89–670, §8(e), Oct. 15, 1966, 80 Stat. 943; 1970 Reorg. Plan No. 2, §102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Pub. L. 92–318, title IX, §906(b)(1), June 23, 1972, 86 Stat. 375; Pub. L. 93–259, §§6(c)(2), 7(b)(3), (4), 8, 9(b), 10, 11, 12(a), 13(a)–(d), 14–18, 20(a)–(c), 21(b), 22, 23, 25(b), Apr. 8, 1974, 88 Stat. 61–69, 72; Pub. L. 95–151, §§4–8, 9(d), 11, 14, Nov. 1, 1977, 91 Stat. 1249, 1250–1252; Pub. L. 96–70, title I, §1225(a), Sept. 27, 1979, 93 Stat. 468; Pub. L. 101–157, §3(c), Nov. 17, 1989, 103 Stat. 939; Pub. L. 103–329, title VI, §633(d), Sept. 30, 1994, 108 Stat. 2428; Pub. L. 104–88, title III, §340, Dec. 29, 1995, 109 Stat. 955; Pub. L. 104–174, §1, Aug. 6, 1996, 110 Stat. 1553; Pub. L. 104–188, [title II], §2105(a), Aug. 20, 1996, 110 Stat. 1929; Pub. L. 105–78, title I, §105, Nov. 13, 1997, 111 Stat. 1477.)

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsec. (b)(3), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended. Title II of the Railway Labor Act was added by act Apr. 10, 1936, ch. 166, 49 Stat. 1189, and is classified generally to subchapter II (§181 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code see section 151 of Title 45 and Tables.

The Outer Continental Shelf Lands Act, referred to in subsec. (f), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

CODIFICATION

In subsec. (a)(1), ''subchapter II of chapter 5 of title 5'' substituted for ''the Administrative Procedure Act'' on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

In subsec. (b)(1), ''section 31502 of title 49'' substituted for ''section 3102 of title 49'' on authority of Pub. L. 103–272, §§1(c), (e), 6(b), July 5, 1994, 108 Stat. 745, 862, 1029, 1378. Previously, ''section 3102 of title 49'' substituted for ''section 204 of the Motor Carrier Act, 1935 [49 U.S.C. 304]'', on authority of Pub. L. 97–449, §6(b), Jan. 12, 1983, 96 Stat. 2443, the first section of which enacted subtitle I (§101 et seq.) and chapter 31 (§3101 et seq.) of subtitle II of Title 49, Transportation.

AMENDMENTS

1997—Subsec. (b)(12). Pub. L. 105–78 substituted ''water, at least 90 percent of which was ultimately delivered for agricultural purposes during the preceding calendar year'' for ''water for agricultural purposes''.

1996—Subsec. (a)(17). Pub. L. 104–188 added par. (17).

Subsec. (c)(5). Pub. L. 104–174 added par. (5).

1995—Subsec. (b)(2). Pub. L. 104–88 substituted ''rail carrier subject to part A of subtitle IV of title 49'' for ''common carrier by rail and subject to the provisions of part I of the Interstate Commerce Act''.

1994—Subsec. (a)(16). Pub. L. 103–329, §633(d)(1), added par. (16).

Subsec. (b)(30). Pub. L. 103–329, §633(d)(2), added par. (30).

1989—Subsec. (a)(2). Pub. L. 101–157, §3(c)(1), struck out par. (2) which related to employees employed by a retail or service establishment.

Subsec. (a)(4). Pub. L. 101–157, §3(c)(1), struck out par. (4) which related to employees employed by an establishment which qualified as an exempt retail establishment under clause (2) of this subsection and was recognized as a retail establishment in the particular industry notwithstanding that such establishment made or processed at the retail establishment the goods that it sold.

Subsec. (g). Pub. L. 101–157, §3(c)(2), substituted ''provided by paragraph (6) of subsection (a) of this section'' for ''provided by paragraphs (2) and (6) of subsection (a) of this section'' and struck out before period at end '', except that the exemption from section 206 of this title provided by paragraph (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) of this section if it were in an enterprise described in section 203(s) of this title''.

1979—Subsec. (f). Pub. L. 96–70 struck out ''; and the Canal Zone'' after ''Johnston Island''.

1977—Subsec. (a)(2). Pub. L. 95–151, §9(d), substituted ''section 203(s)(5)'' for ''section 203(s)(4)''.

Subsec. (a)(3). Pub. L. 95–151, §§4(a), 11, inserted ''organized camp, or religious or non-profit educational conference center,'' after ''recreational establishment,'', and inserted provisions relating to applicability of exemption from sections 206 and 207 of this title authorized by this paragraph for private employees in national parks, etc.

Subsec. (b)(8). Pub. L. 95–151, §14(a), substituted ''forty-four'' for ''forty-six''.

Pub. L. 95–151, §14(b), struck out par. (8) which related to exemption of hotel, motel, and restaurant employees, effective Jan. 1, 1979.

Subsec. (b)(22). Pub. L. 95–151, §5, struck out par. (22) which related to exemption of shade-grown tobacco employees.

Subsec. (b)(25). Pub. L. 95–151, §6(a), struck out par. (25) which related to exemption of cotton ginning employees. See subsec. (i) of this section.

Subsec. (b)(26). Pub. L. 95–151, §7(a), struck out par. (26) which related to exemption of sugar employees. See subsec. (j) of this section.

Subsec. (b)(29). Pub. L. 95–151, §4(b), added par. (29).

Subsec. (c). Pub. L. 95–151, §8, in par. (1) inserted reference to par. (4), and added par. (4).

Subsec. (i). Pub. L. 95–151, §6(b), added subsec. (i).

Subsec. (j). Pub. L. 95–151, §7(b), added subsec. (j).

1974—Subsec. (a)(2). Pub. L. 93–259, §8(a), substituted ''$225,000'' for ''$250,000'' effective Jan. 1, 1975, Pub. L. 93–259, §8(b), substituted ''$200,000'' for ''$225,000'' effective Jan. 1, 1976. Pub. L. 93–259, §8(c), struck out ''or such establishment has an annual dollar volume of sales which is less than $200,000 (exclusive of excise taxes at the retail level which are separately stated)'' after ''section 203(s) of this title'' effective Jan. 1, 1977.

Subsec. (a)(9). Pub. L. 93–259, §23(a)(1), repealed exemption provision respecting any employee employed by an establishment which is a motion picture theater. See subsec. (b)(27) of this section.

Subsec. (a)(11). Pub. L. 93–259, §10(a), repealed exemption provision respecting any employee or proprietor in a retail or service establishment which qualifies as an exempt retail or service establishment under former par. (2) of subsec. (a) with respect to whom provisions of sections 206 and 207 of this title would not otherwise

apply, engaged in handling telegraphic messages for public under an agency or contract arrangement with a telegraph company where telegraph message revenue of such agency does not exceed $500 a month.

Subsec. (a)(13). Pub. L. 93–259, § 23(b)(1), repealed exemption provision respecting any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to mill, processing plant, railroad, or other transportation terminal, if number of employees employed by his employer in such forestry or lumbering operations does not exceed eight. See subsec. (b)(28) of this section.

Subsec. (a)(14). Pub. L. 93–259, § 9(b)(1), repealed exemption provision respecting any agricultural employee employed in the growing and harvesting of shade-grown tobacco who is engaged in 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. See subsec. (b)(22) of this section.

Subsec. (a)(15). Pub. L. 93–259, § 7(b)(3), added par. (15).

Subsec. (b)(2). Pub. L. 93–259, § 23(c), amended par. (2) (insofar as it relates to pipeline employees), inserting ''engaged in the operation of a common carrier by rail and'' after ''employer''.

Subsec. (b)(4). Pub. L. 93–259, § 11(a), effective May 1, 1974, inserted ''who is'' after ''employee'' and '', 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'' before the semi-colon. Pub. L. 93–259, § 11(b), substituted ''forty-four hours'' for ''forty-eight hours'' effective one year after May 1, 1974. Pub. L. 93–259, § 11(c), repealed subsec. (b)(4) effective two years after May 1, 1974.

Subsec. (b)(7). Pub. L. 93–259, § 21(b)(1), substituted ''(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'' for '', if the rates and services of such railway or carrier are subject to regulation by a State or local agency'' effective May 1, 1974. Pub. L. 93–259, § 21(b)(2), substituted ''forty-four hours'' for ''forty-eight hours'' effective one year after May 1, 1974. Pub. L. 93–259, § 21(b)(3) repealed subsec. (b)(7) effective two years after May 1, 1974.

Subsec. (b)(8). Pub. L. 93–259, §§ 12(a), 13(a), effective May 1, 1974, insofar as relating to nursing home employees, struck out exemption provision respecting any employee who 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 receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed, and insofar as relating to a hotel, motel, and restaurant employees, substituted ''(A) any employee (other than an employee of a hotel or motel who performs maid or custodial services) who is'' for ''any employee'', inserted before the semicolon ''and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed'', and added subpar. (B). Pub. L. 93–259, § 13(b), effective one year after May 1, 1974, substituted ''forty-six hours'' for ''forty-eight hours'' in subparas. (A) and (B). Pub. L. 93–259, § 13(c), effective two years after May 1, 1974, substituted ''forty-four hours'' for ''forty-six hours'' in subpar. (B). Pub. L. 93–259, § 13(d), repealed subsec. (b)(8)(B) and eliminated the designation (A), effective three years after May 1, 1974.

Subsec. (b)(10). Pub. L. 93–259, § 14, incorporated existing paragraph in provisions designated as subpar. (A), struck out from the list references to trailers and aircraft, inserted reference to implements, and added subpar. (B) incorporating references to trailers and aircraft.

Subsec. (b)(15). Pub. L. 93–259, § 20(a), struck out exemption provision respecting 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, and sugarcane into sugar. See subsec. (b)(25) and (26) of this section.

Subsec. (b)(18). Pub. L. 93–259, § 15(a), effective May 1, 1974, inserted ''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.'' Pub. L. 93–259, § 15(b), effective one year after May 1, 1974, substituted ''forty-four hours'' for ''forty-eight hours.'' Pub. L. 93–259, § 15(c), repealed par. (18) effective two years after May 1, 1974.

Subsec. (b)(19). Pub. L. 93–259, § 16(a), effective one year after May 1, 1974, substituted ''forty-four hours'' for ''forty-eight hours''. Pub. L. 93–259, § 16(b), repealed par. (19), effective two years after May 1, 1974.

Subsec. (b)(20). Pub. L. 93–259, § 6(c)(2)(A), added par. (20) effective May 1, 1974. Pub. L. 93–259, § 6(c)(2)(B), effective Jan. 1, 1975, made maximum hours provisions inapplicable during any workweek to any employee of a public agency employing during the workweek less than 5 employees.

Subsec. (b)(21). Pub. L. 93–259, § 7(b)(4), added par. (21).

Subsec. (b)(22). Pub. L. 93–259, § 9(b)(2), added par. (22).

Subsec. (b)(23). Pub. L. 93–259, § 10(b)(1), added par. (23), effective May 1, 1974. Pub. L. 93–259, § 10(b)(2), substituted ''forty-four hours'' for ''forty-eight hours'' effective one year after May 1, 1974. Pub. L. 93–259, § 10(b)(3), repealed par. (23) effective two years after May 1, 1974.

Subsec. (b)(24). Pub. L. 93–259, § 17, added par. (24).

Subsec. (b)(25). Pub. L. 93–259, § 20(b)(1), added par. (25) effective May 1, 1974. Pub. L. 93–259, § 20(b)(2), effective Jan. 1, 1975, substituted ''sixty-six'' for ''seventy-two'' in subpar. (A), ''sixty'' for ''sixty-four'' in subpar. (B), and ''forty-six hours in any workweek for not more than two workweeks in that year, and'' for ''forty-eight hours in any other workweek in that year,'' in subpar. (D), and added subpar. (E). Pub. L. 93–259, § 20(b)(3), effective Jan. 1, 1976, substituted ''sixty'' for ''sixty-six'', ''fifty-six'' for ''sixty'', ''forty-eight'' for ''fifty'', ''forty-four'' for ''forty-six'', and ''forty'' for ''forty-four''.

Subsec. (b)(26). Pub. L. 93–259, § 20(c)(1), added par. (26) effective May 1, 1974. Pub. L. 93–259, § 20(c)(2), effective Jan. 1, 1975, substituted ''sixty-six'' for ''seventy-two'' in subpar. (A), ''sixty'' for ''sixty-four'' in subpar. (B), and ''forty-six hours in any workweek for not more than two workweeks in that year, and'' for ''forty-eight hours in any other workweek in that year,'' in subpar. (D), and added subpar. (E). Pub. L. 93–259, § 20(c)(3), effective Jan. 1, 1976, substituted ''sixty'' for ''sixty-six'', ''fifty-six'' for ''sixty'', ''forty-eight'' for ''fifty'', ''forty-four'' for ''forty-six'', and ''forty'' for ''forty-four''.

Subsec. (b)(27). Pub. L. 93–259, § 23(a)(2), added par. (27).

Subsec. (b)(28). Pub. L. 93–259, § 23(b)(2), added par. (28).

Subsec. (c)(1). Pub. L. 93–259, § 25(b), amended par. (1) generally, striking out ''with respect'' after ''shall not apply'', inserting '', if such employee—'', and adding subpars. (A) to (C).

Subsec. (g). Pub. L. 93–259, § 18, added subsec. (g).

Subsec. (h). Pub. L. 93–259, § 22, added subsec. (h).

1972—Subsec. (a). Pub. L. 92–318 inserted ''(except subsection (d) in the case of paragraph (1) of this subsection)'' after introductory text ''sections 206''.

1966—Subsec. (a)(1). Pub. L. 89–601, § 214, inserted ''(including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools)'' after ''professional capacity''.

Subsec. (a)(2). Pub. L. 89–601, § 201(a), revised the retail or service establishment exemption so as to ex-

empt employees of a retail or service establishment (other than an establishment or employee engaged in laundering or drycleaning or an establishment engaged in the operation of a hospital, school, or institution specifically included in the definition of the term ''enterprise engaged in commerce or in the production of goods for commerce'') if more than 50 per centum of the establishment's annual dollar volume of sales of goods or services is made within the state in which the establishment is located and the establishment is not an enterprise described in section 203(s) of this title or the establishment has an annual dollar volume of sales which is less than $250,000.

Subsec. (a)(3). Pub. L. 89–601, §§201(b)(2), 202, repealed par. (3) relating to employees of laundry, cleaning, and fabric or clothing repair establishments doing more than 50 per centum of their annual dollar volume of business within the state in which the establishment is located and enacted a new par. (3) relating to employees of amusement or recreational establishments which do not operate for more than seven months in any calendar year or which had receipts over a six-month period which were not more than 33⅓ per centum of its average receipts for the other six months of such year.

Subsec. (a)(6). Pub. L. 89–601, §203(a), limited the provisions exempting agricultural employees from application of sections 206 and 207 of this title by narrowing the class of exempted agricultural employees to include only an employee employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, an employee who is the spouse, parent, child, or other member of his employer's immediate family, certain hand harvest laborers, or an employee principally engaged in the range production of livestock. See subsec. (b)(12) of this section.

Subsec. (a)(7). Pub. L. 89–601, §215(c), extended coverage to include employees exempted by a certificate of the Secretary.

Subsec. (a)(8). Pub. L. 89–601, §205, substituted ''where published'' for ''where printed and published''.

Subsec. (a)(9). Pub. L. 89–601, §§206(a), 207, repealed par. (9) relating to employees of street, suburban, or interurban electric railways, or local trolleys or motor bus carriers not in a section 203(s) enterprise and enacted a new par. (9) relating to employees employed by motion picture theaters. See subsec. (b)(7) of this section.

Subsec. (a)(10). Pub. L. 89–601, §§204(a), 215(b)(1), repealed par. (10) relating to employees engaged in handling and processing of agricultural, horticultural, and dairy products and redesignated par. (11) as (10). See section 207(d) of this title.

Subsec. (a)(11). Pub. L. 89–601, §215(b)(1), redesignated par. (13) as (11). Former par. (11) redesignated (10).

Subsec. (a)(12). Pub. L. 89–601, §§206(b)(1), 215(b)(1), repealed par. (12) relating to employees of employers engaged in the business of operating taxicabs and redesignated par. (14) as (12). See subsec. (b)(17) of this section.

Subsec. (a)(13). Pub. L. 89–601, §§208, 215(b)(1), redesignated par. (15) as (13) and substituted ''eight'' for ''twelve''. Former par. (13) redesignated (11).

Subsec. (a)(14). Pub. L. 89–601, §215(b), redesignated par. (21) as (14) and substituted a period for ''; or'' at end. Former par. (14) redesignated (12).

Subsec. (a)(15). Pub. L. 89–601, §215(b)(1), redesignated par. (15) as (13).

Subsec. (a)(16). Pub. L. 89–601, §203(b), repealed par. (16) relating to agricultural employees employed in livestock auctions. See subsec. (b)(13) of this section.

Subsec. (a)(17). Pub. L. 89–601, §204(a), repealed par. (17) relating to country elevator operators. See subsec. (b)(14) of this section.

Subsec. (a)(18). Pub. L. 89–601, §204(a), repealed par. (18) relating to cotton ginning employees. See subsec. (b)(15) of this section.

Subsec. (a)(19). Pub. L. 89–601, §209(a), repealed par. (19) relating to employees of retail and service establishments that are primarily engaged in the business of selling automobiles, trucks, or farm implements. See subsec. (b)(10) of this section.

Subsec. (a)(20). Pub. L. 89–601, §210(a), repealed par. (20) relating to employees of food retail or service establishments. See subsec. (b)(18) of this section.

Subsec. (a)(21). Pub. L. 89–601, §215(b)(1), redesignated par. (21) as (14).

Subsec. (a)(22). Pub. L. 89–601, §204(a), repealed par. (22) relating to fruit and vegetable transportation employees. See subsec. (b)(16) of this section.

Subsec. (b)(1). Pub. L. 89–670 substituted ''Secretary of Transportation'' for ''Interstate Commerce Commission''.

Subsec. (b)(7). Pub. L. 89–601, §206(c), narrowed the scope of the exemption from any employee of the covered transportation companies to drivers, operators, and conductors only and narrowed the range of covered transportation companies from any street, suburban, or interurban electric railway, or local trolley or motorbus carrier to only those of such named enterprises as have their rates and service subject to regulation by a state or local agency.

Subsec. (b)(8). Pub. L. 89–601, §§201(b)(1), 211, repealed par. (8) which named employees of gasoline service stations as a group to which section 207 of this title shall not apply and enacted a new par. (8) providing that section 207 of this title shall not apply with respect to hotel, motel, or restaurant employees and employees who receive compensation for employment in excess 48 hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed and who is employed by an institution other than a hospital primarily engaged in the care of the sick, the aged, or the mentally ill or defective residing on the premises.

Subsec. (b)(10). Pub. L. 89–601, §§209(b), 212(a), repealed par. (10) which granted an unlimited overtime exemption relating to petroleum distribution employees and enacted a new par. (10) relating to salesmen, partsmen, or mechanics 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. See subsec. (b)(3) of this section.

Subsec. (b)(12) to (19). Pub. L. 89–601, §§203(c)(B), 204(b), 206(b)(2), 210(b), added pars. (12) to (19).

Subsec. (c). Pub. L. 89–601, §203(d), inserted provision making section 212 of this title relating to child labor applicable to an employee below the age of sixteen employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

Subsec. (f). Pub. L. 89–601, §213, inserted reference to Eniwetok Atoll, Kwajalein Atoll, and Johnston Island.

1961—Subsec. (a)(1). Pub. L. 87–30, §9, substituted ''any employee employed in a bona fide executive, administrative, or professional capacity, 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'' and exception provision for ''any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator)''.

Subsec. (a)(2). Pub. L. 87–30, §9, inserted conditional provision, including subclauses (i) to (iv).

Subsec. (a)(5). Pub. L. 87–30, §9, inserted ''propagating'' and ''or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations'' after ''taking'' and ''life'', respectively, and substituted ''loading and unloading when performed by any such employee'' for ''including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing (other than canning), marketing, freezing, curing, storing, or distributing the above

products or byproducts thereof''. See subsec. (b)(4) of this section.

Subsec. (a)(7). Pub. L. 87–30, § 9, substituted ''Secretary'' for ''Administrator''.

Subsec. (a)(9). Pub. L. 87–30, § 9, substituted ''not in an enterprise described in section 203(s)(2) of this title'' for ''not included in other exemptions contained in this section.''.

Subsec. (a)(10). Pub. L. 87–30, § 9, substituted ''Secretary'' for ''Administrator'' and struck out ''ginning'' after ''storing''.

Subsec. (a)(11). Pub. L. 87–30, § 9, substituted ''by an independently owned public telephone company'' for ''in a public telephone exchange''.

Subsec. (a)(13). Pub. L. 87–30, § 9, substituted ''which qualifies as an exempt retail or service establishment under clause (2) of this subsection'' for ''as defined in clause (2) of this subsection''.

Subsec. (a)(14). Pub. L. 87–30, § 9, inserted ''on a vessel other than an American vessel''.

Subsec. (a)(16) to (22). Pub. L. 87–30, § 9, added pars. (16) to (22).

Subsec. (b)(4). Pub. L. 87–30, § 9, extended exemption to any employee in the processing, marketing, freezing, curing, storing, packing for shipment, or distributing of aquatic forms of life, formerly contained in subsec. (a)(5) of this section.

Subsec. (b)(6) to (11). Pub. L. 87–30, § 9, added pars. (6) to (11).

Subsec. (d). Pub. L. 87–30, § 10, extended the nonapplicability of sections 206, 207, and 212 of this title to any homeworker engaged in the making of evergreen wreaths.

1960—Subsec. (f). Pub. L. 86–624 struck out ''Alaska; Hawaii;'' before ''Puerto Rico''.

1957—Subsec. (f). Pub. L. 85–231 added subsec. (f).

1956—Subsec. (e). Act Aug. 8, 1956, added subsec. (b).

1949—Subsec. (a)(2). Act Oct. 26, 1949, clarified exemption by defining term ''retail or service establishment'' and stated conditions under which exemption shall apply.

Subsec. (a)(3). Act Oct. 26, 1949, redesignated par. (3) as (14) and added par. (3) providing a limited exemption to employees of laundries and establishments engaged in laundering, cleaning, or repairing clothing of fabrics.

Subsec. (a)(4). Act Oct. 26, 1949, redesignated par. (4) as subsec. (b)(3) and added par. (4) providing limited exemption to employees of retail establishments making or processing goods.

Subsec. (a)(5). Act Oct. 26, 1949, struck out canning of fish, shellfish, etc. See subsec. (b)(4).

Subsec. (a)(6). Act Oct. 26, 1949, added irrigation workers to the exemption.

Subsec. (a)(8). Act Oct. 26, 1949, extended exemption to employees of newspapers published daily, increased circulation limitation from 3,000 to 4,000, and increased circulation area to include counties contiguous to county of publication.

Subsec. (a)(10). Act Oct. 26, 1949, struck out ''to'' before ''any individual''.

Subsec. (a)(11). Act Oct. 26, 1949, increased number of stations from, less than 500, to, not more than 750.

Subsec. (a)(12), (13). Act Oct. 26, 1949, added pars. (12) and (13).

Subsec. (a)(14). Act Oct. 26, 1949, redesignated par. (3) as (14).

Subsec. (a)(15). Act Oct. 26, 1949, added par. (15).

Subsec. (b)(3) to (5). Act Oct. 26, 1949, added pars. (3) to (5).

Subsec. (c). Act Oct. 26, 1949, substituted ''outside of school hours for the school district where such employee is living while he is so employed'' for prior provision relating to school attendance following ''in agricultural'', and added radio or television productions to the exemption.

Subsec. (d). Act Oct. 26, 1949, added par. (d).

1939—Subsec. (a)(11). Act Aug. 9, 1939, added par. (11).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–329 effective on first day of first applicable pay period beginning on or after 30th day following Sept. 30, 1994, with exceptions relating to criminal investigators employed in Offices of Inspectors General, see section 633(e) of Pub. L. 103–329, set out as an Effective Date note under section 5545a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–157 effective Apr. 1, 1990, see section 3(e) of Pub. L. 101–157, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 14(a), (b) of Pub. L. 95–151 provided that the amendments by that section are effective Jan. 1, 1978, and Jan. 1, 1979, respectively.

Amendment by sections 4 to 7 of Pub. L. 95–151 effective Jan. 1, 1978, see section 15(a) of Pub. L. 95–151, set out as a note under section 203 of this title.

Amendment by sections 8, 9(d), and 11 of Pub. L. 95–151 effective on Nov. 1, 1977, see section 15(b) of Pub. L. 95–151, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 6(c)(2)(A), (B) of Pub. L. 93–259 provided that the amendments made by that section are effective May 1, 1974, and Jan. 1, 1975, respectively.

Section 8(a)–(c) of Pub. L. 93–259 provided that the amendments made by that section are effective Jan. 1, 1975, 1976, and 1977, respectively.

Section 10(b)(2), (3) of Pub. L. 93–259 provided that the amendment and repeal made by that section are effective one year and two years after May 1, 1974, respectively.

Section 11(b), (c) of Pub. L. 93–259 provided that the amendment and repeal made by that section are effective one year and two years after May 1, 1974, respectively.

Section 13(b)–(d) of Pub. L. 93–259 provided that the amendments made by that section are effective one year, two years, and three years after May 1, 1974, respectively.

Section 15(b), (c) of Pub. L. 93–259 provided that the amendment and repeal made by that section are effective one year and two years after May 1, 1974, respectively.

Section 16(a), (b) of Pub. L. 93–259 provided that the amendment and repeal made by that section are effective one year and two years after May 1, 1974, respectively.

Section 20(b)(2), (3) of Pub. L. 93–259 provided that the amendments made by that section are effective Jan. 1, 1975, and 1976, respectively.

Section 20(c)(2), (3) of Pub. L. 93–259 provided that the amendments made by that section are effective Jan. 1, 1975, and 1976, respectively.

Section 21(b)(2), (3) of Pub. L. 93–259 provided that the amendment and repeal made by that section are effective one year and two years after May 1, 1974, respectively.

Amendment by sections 7(b)(3), (4), 9(b), 10(a), (b)(1), 11(a), 12(a), 13(a), 14, 15(a), 17, 18, 20(a), (b)(1), (c)(1), 21(b)(1), 22, 23, and 25(b) of Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment by Pub. L. 89–670 effective Apr. 1, 1967, as prescribed by President and published in Federal Reg-

ister, see section 16(a), formerly § 15(a), of Pub. L. 89–670 and Ex. Ord. No. 11340, Mar. 30, 1967, 32 F.R. 5453.

Amendment by Pub. L. 89–601 effective Feb. 1, 1967, except as otherwise provided, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87–30, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1957 AMENDMENT

Pub. L. 85–231, § 2, provided that: ''The amendments made by this Act [amending this section and sections 216 and 217 of this title] shall take effect upon the expiration of ninety days from the date of its enactment [Aug. 30, 1957].''

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

TRANSFER OF FUNCTIONS

Functions vested by law (including reorganization plans) in Bureau of the Budget or Director of Bureau of the Budget transferred to President of the United States by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970 redesignated Bureau of the Budget as Office of Management and Budget.

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

EXEMPTIONS FOR APPRENTICES AND STUDENT LEARNERS

Section 3 of Pub. L. 104–174 provided that: ''Section 1 [amending this section] shall not be construed as affecting the exemption for apprentices and student learners published in section 570.63 of title 29, Code of Federal Regulations.''

REGULATIONS CONCERNING COMPUTER, SOFTWARE, AND OTHER SIMILARLY SKILLED PROFESSIONALS

Pub. L. 101–583, § 2, Nov. 15, 1990, 104 Stat. 2871, provided that: ''Not later than 90 days after the date of enactment of this Act [Nov. 15, 1990], the Secretary of Labor shall promulgate regulations that permit computer systems analysts, computer programmers, software engineers, and other similarly skilled professional workers as defined in such regulations to qualify as exempt executive, administrative, or professional employees under section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)). Such regulations shall provide that if such employees are paid on an hourly basis they shall be exempt only if their hourly rate of pay is at least 6½ times greater than the applicable minimum wage rate under section 6 of such Act (29 U.S.C. 206).''

PUBLIC AGENCY EMPLOYEES IN FIRE PROTECTION AND LAW ENFORCEMENT ACTIVITIES; STUDIES IN 1976 OF 1975 TOURS OF DUTY

Section 6(c)(3) of Pub. L. 93–259 authorized Secretary of Labor to conduct a study in 1976 of average number of hours in tours of duty in work periods in 1975 of certain employees of public agencies employed in fire protection and law enforcement activities, and publish results of such studies in Federal Register.

PIPELINE EMPLOYEES UNDER SUBSEC. (b)(2)

Section 23(c) of Pub. L. 93–259 provided in part for amendment of subsec. (b)(2) of this section ''insofar as it relates to pipeline employees''.

RULES, REGULATIONS, AND ORDERS PROMULGATED WITH REGARD TO 1966 AMENDMENTS

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89–601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89–601, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

STUDY OF AGRICULTURAL HANDLING AND PROCESSING EXEMPTIONS AND RATES OF PAY IN EXEMPT FOOD SERVICE ENTERPRISES

Section 13 of Pub. L. 87–30 directed Secretary of Labor to study complicated system of exemptions available for handling and processing agricultural products under this chapter and complex problems involving rates of pay of certain employees exempted from provisions of this chapter, and submit results of his studies along with his recommendations for proposed legislation to second session of Eighty-seventh Congress.

TRANSPORTATION OF MIGRANT FARM WORKERS

Section 3 of act Aug. 3, 1956, provided that: ''Section 13(b)(1) of the Fair Labor Standards Act, as amended [subsec. (b)(1) of this section] shall not apply in the case of any employee with respect to whom the Interstate Commerce Commission [now Secretary of Transportation] has power to establish qualifications and maximum hours of service solely by virtue of section 204(a)(3a) of the Interstate Commerce Act [now 49 U.S.C. 31502].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 206, 216, 218, 795, 1803, 2612 of this title; title 5 sections 5343, 5349, 5545a; title 42 sections 300e–9, 1437t, 3056, 8009, 8011.

§ 214. Employment under special certificates

(a) Learners, apprentices, messengers

The Secretary, 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 206 of this title and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.

(b) Students

(1)(A) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less than $1.60 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

(B) Except as provided in paragraph (4)(B), during any month in which full-time students are to be employed in any retail or service establishment under certificates issued under this subsection the proportion of student hours of employment to the total hours of employment of all employees in such establishment may not exceed—

(i) 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) were covered by this chapter before the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period,

(II) the maximum proportion for any corresponding month of student hours of employment to the total hours of employment of all employees in such establishment applicable to the issuance of certificates under this section at any time before the effective date of the Fair Labor Standards Amendments of 1974 for the employment of students by such employer, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater;

(ii) in the case of retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered for the first time on or after the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of hours of employment of students in such establishment to the total hours of employment of all employees in such establishment for the corresponding month of the twelve-month period immediately prior to the effective date of such Amendments,

(II) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater; or

(iii) in the case of a retail or service establishment for which records of student hours worked are not available, the proportion of student hours of employment to the total hours of employment of all employees based on the practice during the immediately preceding twelve-month period in (I) similar establishments of the same employer in the same general metropolitan area in which such establishment is located, (II) similar establishments of the same or nearby communities if such establishment is not in a metropolitan area, or (III) other establishments of the same general character operating in the community or the nearest comparable community.

For purpose of clauses (i), (ii), and (iii) of this subparagraph, the term ''student hours of employment'' means hours during which students are employed in a retail or service establishment under certificates issued under this subsection.

(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 206(a)(5) of this title or not less than $1.30 an hour, whichever is the higher, 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 206 of this title or not less than $1.60 an hour, whichever is the higher, 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 six, 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 six—

(i) the Secretary may issue a special certificate under paragraph (1) or (2) for the employment of a student by such employer if such employer certifies to the Secretary that the employment of such student will not reduce the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection, and

(ii) in the case of an employer which is a retail or service establishment, subparagraph (B) of paragraph (1) shall not apply with respect to the issuance of special certificates for such employer under such paragraph.

The requirement of this subparagraph shall not apply in the case of the issuance of special certificates under paragraph (3) for the employment of full-time students by institutions of higher education; except that if the Secretary determines that an institution of higher education is employing students under certificates issued under paragraph (3) but in violation of

the requirements of that paragraph or of regulations issued thereunder, the requirements of this subparagraph shall apply with respect to the issuance of special certificates under paragraph (3) for the employment of students by such institution.

(C) No special certificate may be issued under this subsection unless the employer for whom the certificate is to be issued provides evidence satisfactory to the Secretary of the student status of the employees to be employed under such special certificate.

(D) To minimize paperwork for, and to encourage, small businesses to employ students under special certificates issued under paragraphs (1) and (2), the Secretary shall, by regulation or order, prescribe a simplified application form to be used by employers in applying for such a certificate for the employment of not more than six full-time students. Such an application shall require only—

(i) a listing of the name, address, and business of the applicant employer,

(ii) a listing of the date the applicant began business, and

(iii) the certification that the employment of such full-time students will not reduce the full-time employment opportunities of persons other than persons employed under special certificates.

(c) Handicapped workers

(1) The Secretary, to the extent necessary 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, physical or mental deficiency, or injury, at wages which are—

(A) lower than the minimum wage applicable under section 206 of this title,

(B) commensurate with those paid to nonhandicapped workers, employed in the vicinity in which the individuals under the certificates are employed, for essentially the same type, quality, and quantity of work, and

(C) related to the individual's productivity.

(2) The Secretary shall not issue a certificate under paragraph (1) unless the employer provides written assurances to the Secretary that—

(A) in the case of individuals paid on an hourly rate basis, wages paid in accordance with paragraph (1) will be reviewed by the employer at periodic intervals at least once every six months, and

(B) wages paid in accordance with paragraph (1) will be adjusted by the employer at periodic intervals, at least once each year, to reflect changes in the prevailing wage paid to experienced nonhandicapped individuals employed in the locality for essentially the same type of work.

(3) Notwithstanding paragraph (1), no employer shall be permitted to reduce the hourly wage rate prescribed by certificate under this subsection in effect on June 1, 1986, of any handicapped individual for a period of two years from such date without prior authorization of the Secretary.

(4) Nothing in this subsection shall be construed to prohibit an employer from maintaining or establishing work activities centers to provide therapeutic activities for handicapped clients.

(5)(A) Notwithstanding any other provision of this subsection, any employee receiving a special minimum wage at a rate specified pursuant to this subsection or the parent or guardian of such an employee may petition the Secretary to obtain a review of such special minimum wage rate. An employee or the employee's parent or guardian may file such a petition for and in behalf of the employee or in behalf of the employee and other employees similarly situated. No employee may be a party to any such action unless the employee or the employee's parent or guardian gives consent in writing to become such a party and such consent is filed with the Secretary.

(B) Upon receipt of a petition filed in accordance with subparagraph (A), the Secretary within ten days shall assign the petition to an administrative law judge appointed pursuant to section 3105 of title 5. The administrative law judge shall conduct a hearing on the record in accordance with section 554 of title 5 with respect to such petition within thirty days after assignment.

(C) In any such proceeding, the employer shall have the burden of demonstrating that the special minimum wage rate is justified as necessary in order to prevent curtailment of opportunities for employment.

(D) In determining whether any special minimum wage rate is justified pursuant to subparagraph (C), the administrative law judge shall consider—

(i) the productivity of the employee or employees identified in the petition and the conditions under which such productivity was measured; and

(ii) the productivity of other employees performing work of essentially the same type and quality for other employers in the same vicinity.

(E) The administrative law judge shall issue a decision within thirty days after the hearing provided for in subparagraph (B). Such action shall be deemed to be a final agency action unless within thirty days the Secretary grants a request to review the decision of the administrative law judge. Either the petitioner or the employer may request review by the Secretary within fifteen days of the date of issuance of the decision by the administrative law judge.

(F) The Secretary, within thirty days after receiving a request for review, shall review the record and either adopt the decision of the administrative law judge or issue exceptions. The decision of the administrative law judge, together with any exceptions, shall be deemed to be a final agency action.

(G) A final agency action shall be subject to judicial review pursuant to chapter 7 of title 5. An action seeking such review shall be brought within thirty days of a final agency action described in subparagraph (F).

(d) Employment by schools

The Secretary may by regulation or order provide that sections 206 and 207 of this title 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.

(June 25, 1938, ch. 676, § 14, 52 Stat. 1068; Oct. 26, 1949, ch. 736, § 12, 63 Stat. 918; Pub. L. 87–30, § 11, May 5, 1961, 75 Stat. 74; Pub. L. 89–601, title V, § 501, Sept. 23, 1966, 80 Stat. 842; Pub. L. 93–259, § 24(a), (b), Apr. 8, 1974, 88 Stat. 69, 72; Pub. L. 95–151, §§ 12, 13, Nov. 1, 1977, 91 Stat. 1252; Pub. L. 99–486, Oct. 16, 1986, 100 Stat. 1229; Pub. L. 101–157, § 4(d), Nov. 17, 1989, 103 Stat. 941.)

REFERENCES IN TEXT

Effective date of the Fair Labor Standards Amendments of 1974, referred to in subsec. (b)(1)(B)(i), (ii), means May 1, 1974, except as otherwise specifically provided, under provisions of section 29(a) of Pub. L. 93–259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

AMENDMENTS

1989—Subsec. (b)(1)(A). Pub. L. 101–157 struck out ''(or in the case of employment in Puerto Rico or the Virgin Islands not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206(c) of this title)'' after ''whichever is the higher''.

Subsec. (b)(2), (3). Pub. L. 101–157 struck out ''(or in the case of employment in Puerto Rico or the Virgin Islands not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(c) of this title)'' after ''whichever is the higher''.

1986—Subsec. (c). Pub. L. 99–486 amended subsec. (c) generally, revising and restating as pars. (1) to (5) provisions formerly contained in pars. (1) to (3).

1977—Subsec. (b)(4)(B). Pub. L. 95–151, § 12(a), substituted ''six'' for ''four'' wherever appearing.

Subsec. (b)(4)(D). Pub. L. 95–151, § 13, added subpar. (D).

1974—Subsec. (a). Pub. L. 93–259, § 24(a), added subsec. (a) and struck out former subsec. (a) which had provided: ''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 delivery letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 206 of this title and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.''

Subsec. (b). Pub. L. 93–259, § 24(a), added subsec. (b) and struck out former subsec. (b) which had provided: ''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 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 206 of this title, 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 chapter 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.''

Subsecs. (c), (d). Pub. L. 93–259, § 24(a), (b), struck out subsec. (c) and redesignated subsec. (d) as (c). Former subsec. (c) had provided: ''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 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 206 of this title. 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.''

1966—Pub. L. 89–601 provided for employment of full-time students regardless of age but in compliance with applicable child labor laws outside of their school hours in retail or service establishments or in agriculture at not less than 85 percent of the minimum wage in full-time positions during school vacations or in part-time positions not to exceed 20 hours in any workweek under certificates issued by the Secretary, set out the formula for the allowable proportion of student hours of employment to total hours of employment, provided for the employment of handicapped workers at rates down to 50 percent of the applicable minimum wage and at even lower rates for persons suffering severe impairment, authorized the establishment of special rates for handicapped workers employed in work activities centers, and defined work activity centers.

1961—Pub. L. 87–30 provided for employment of students in cl. (1).

1949—Act Oct. 26, 1949, substituted ''primarily'' for ''exclusively'' after ''messengers employed''.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–151 effective Nov. 1, 1977, see section 15(b) of Pub. L. 95–151, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–601 effective Feb. 1, 1967, except as otherwise provided, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87–30, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

RULES, REGULATIONS, AND ORDERS PROMULGATED WITH REGARD TO 1966 AMENDMENTS

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89–601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89–601, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

STUDY OF WAGES PAID HANDICAPPED CLIENTS IN SHELTERED WORKSHOPS

Section 605 of Pub. L. 89–601 instructed Secretary of Labor to commence a complete study of wage payments to handicapped clients of sheltered workshops and of feasibility of raising existing wage standards in such workshops. The Secretary was directed to report to Congress by July 1, 1967, findings of such study with appropriate recommendations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 215, 721, 795 of this title.

§215. Prohibited acts; prima facie evidence

(a) After the expiration of one hundred and twenty days from June 25, 1938, 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 206 or section 207 of this title, or in violation of any regulation or order of the Secretary issued under section 214 of this title; except that no provision of this chapter 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 chapter 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 this chapter, 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 206 or section 207 of this title, or any of the provisions of any regulation or order of the Secretary issued under section 214 of this title;

(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 chapter, 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 212 of this title;

(5) to violate any of the provisions of section 211(c) of this title, or any regulation or order made or continued in effect under the provisions of section 211(d) of this title, 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) of this section 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.

(June 25, 1938, ch. 676, §15, 52 Stat. 1068; Oct. 26, 1949, ch. 736, §13, 63 Stat. 919; 1950 Reorg. Plan No. 6, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263.)

AMENDMENTS

1949—Subsec. (a)(1). Act Oct. 26, 1949, §13(a), inserted provision protecting purchaser in good faith in sale of goods produced in violation of this chapter.

Subsec. (a)(5). Act Oct. 26, 1949, §13(b), inserted ''or any regulation or order made or continued in effect under the provisions of section 211(d) of this title'' after ''211(c) of this title''.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

LIABILITY OF PUBLIC AGENCY FOR DISCRIMINATION AGAINST EMPLOYEE FOR ASSERTION OF COVERAGE

Pub. L. 99–150, §8, Nov. 13, 1985, 99 Stat. 791, provided that: ''A public agency which is a State, political subdivision of a State, or an interstate governmental agency and which discriminates or has discriminated against an employee with respect to the employee's wages or other terms or conditions of employment because on or after February 19, 1985, the employee asserted coverage under section 7 of the Fair Labor Standards Act of 1938 [29 U.S.C. 207] shall be held to have violated section 15(a)(3) of such Act [29 U.S.C. 215(a)(3)]. The protection against discrimination afforded by the preceding sentence shall be available after August 1, 1986, only for an employee who takes an action described in section 15(a)(3) of such Act.''

CROSS REFERENCES

Prohibition of age discrimination under this section, see section 626 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 206, 216, 217, 626 of this title.

§ 216. Penalties

(a) Fines and imprisonment

Any person who willfully violates any of the provisions of section 215 of this title 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) Damages; right of action; attorney's fees and costs; termination of right of action

Any employer who violates the provisions of section 206 or section 207 of this title 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. Any employer who violates the provisions of section 215(a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 217 of this title in which (1) 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 206 or section 207 of this title by an employer liable therefor under the provisions of this subsection or (2) legal or equitable relief is sought as a result of alleged violations of section 215(a)(3) of this title.

(c) Payment of wages and compensation; waiver of claims; actions by the Secretary; limitation of actions

The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 206 or section 207 of this title, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) of this section to bring an action by or on behalf of any employee to recover the liability specified in the first sentence of such subsection 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 206 and 207 of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b) of this section, unless such action is dismissed without prejudice on motion of the Secretary. Any sums thus recovered by the Secretary of Labor 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 of Labor, 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 of Labor under this subsection for the purposes of the statutes of limitations provided in section 255(a) of this title, 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) Savings provisions

In any action or proceeding commenced prior to, on, or after August 8, 1956, no employer shall be subject to any liability or punishment under this chapter or the Portal-to-Portal Act of 1947 [29 U.S.C. 251 et seq.] on account of his failure to comply with any provision or provisions of this chapter or such Act (1) with respect to work heretofore or hereafter performed in a workplace to which the exemption in section 213(f) of this title 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 206(a)(3) of this title at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.

(e) Civil penalties for child labor violations

Any person who violates the provisions of section 212 of this title or section 213(c)(5) of this title, relating to child labor, or any regulation issued under section 212 of this title or section 213(c)(5) of this title, shall be subject to a civil

penalty of not to exceed $10,000 for each employee who was the subject of such a violation. Any person who repeatedly or willfully violates section 206 or 207 of this title shall be subject to a civil penalty of not to exceed $1,000 for each such violation. In determining the amount of any penalty under this subsection, 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 any penalty under this subsection, 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 215(a)(4) of this title or a repeated or willful violation of section 215(a)(2) of this title, to be paid to the Secretary.

Any administrative determination by the Secretary of the amount of any penalty under this subsection 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, and regulations to be promulgated by the Secretary. Except for civil penalties collected for violations of section 212 of this title, 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 9a of this title. Civil penalties collected for violations of section 212 of this title shall be deposited in the general fund of the Treasury.

(June 25, 1938, ch. 676, §16, 52 Stat. 1069; May 14, 1947, ch. 52, §5(a), 61 Stat. 87; Oct. 26, 1949, ch. 736, §14, 63 Stat. 919; 1950 Reorg. Plan No. 6, §§1, 2, 15 F.R. 3174, 64 Stat. 1263; Aug. 8, 1956, ch. 1035, §4, 70 Stat. 1118; Pub. L. 85–231, §1(2), Aug. 30, 1957, 71 Stat. 514; Pub. L. 87–30, §12(a), May 5, 1961, 75 Stat. 74; Pub. L. 89–601, title VI, §601(a), Sept. 23, 1966, 80 Stat. 844; Pub. L. 93–259, §§ 6(d)(1), 25(c), 26, Apr. 8, 1974, 88 Stat. 61, 72, 73; Pub. L. 95–151, §10, Nov. 1, 1977, 91 Stat. 1252; Pub. L. 101–157, §9, Nov. 17, 1989, 103 Stat. 945; Pub. L. 101–508, title III, §3103, Nov. 5, 1990, 104 Stat. 1388–29; Pub. L. 104–174, §2, Aug. 6, 1996, 110 Stat. 1554.)

REFERENCES IN TEXT

The Portal-to-Portal Act of 1947, referred to in subsec. (d), is act May 14, 1947, ch. 52, 61 Stat. 84, as amended, which is classified principally to chapter 9 (§251 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 251 of this title and Tables.

The effective date of this amendment of subsection (d), referred to in subsec. (d), occurred upon the expiration of 90 days after Aug. 30, 1957. See section 2 of Pub. L. 85–231, set out as an Effective Date of 1957 Amendment note under section 213 of this title.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–174 in first sentence substituted ''of section 212 of this title or section 213(c)(5) of this title'' for ''of section 212 of this title'' and ''under section 212 of this title or section 213(c)(5) of this title'' for ''under that section''.

1990—Subsec. (e). Pub. L. 101–508 struck out ''or any person who repeatedly or willfully violates section 206 or 207 of this title'' after ''issued under that section,'' in first sentence, substituted ''not to exceed $10,000 for each employee who was the subject of such a violation'' for ''not to exceed $1,000 for each such violation'' in first sentence, inserted after first sentence ''Any person who repeatedly or willfully violates section 206 or 207 of this title shall be subject to a civil penalty of not to exceed $1,000 for each such violation.'', substituted ''any penalty under this subsection'' for ''such penalty'' wherever appearing except after ''appropriateness of'', substituted ''Except for civil penalties collected for violations of section 212 of this title, sums'' for ''Sums'' in last sentence, and inserted at end ''Civil penalties collected for violations of section 212 of this title shall be deposited in the general fund of the Treasury.''

1989—Subsec. (e). Pub. L. 101–157 inserted ''or any person who repeatedly or willfully violates section 206 or 207 of this title'' in introductory provisions and inserted ''or a repeated or willful violation of section 215(a)(2) of this title'' in par. (3).

1977—Subsec. (b). Pub. L. 95–151, §10(a), (b), inserted provisions relating to violations of section 215(a)(3) of this title by employers, ''(1)'' after ''section 217 of this title in which'', and cl. (2), and substituted ''An action to recover the liability prescribed in either of the preceding sentences'' for ''Action to recover such liability''.

Subsec. (c). Pub. L. 95–151, §10(c), inserted ''to recover the liability specified in the first sentence of such subsection'' after ''an action by or on behalf of any employee''.

1974—Subsec. (b). Pub. L. 93–259, §6(d)(1), substituted in second sentence ''maintained against any employer (including a public agency) in any Federal or State court'' for ''maintained in any court''.

Subsec. (c). Pub. L. 93–259, §26, in revising first three sentences, reenacted first sentence, substituting ''Secretary'' for ''Secretary of Labor''; included in second sentence provision for an action by the Secretary for liquidated damaged and deleted requirement of a written request by an employee claiming unpaid minimum wages or unpaid overtime compensation with the Secretary of Labor prior to an action by the Secretary and proviso prohibiting any action in any case involving an issue of law not settled finally by the courts and depriving courts of jurisdiction of any action or proceeding involving the issue of law not settled finally; and substituted third sentence ''The right provided by subsection (b) of this section to bring by or on behalf of any employee and of any employees 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 206 and 207 of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b) of this section, unless such action is dismissed without prejudice on motion of the Secretary.'' for ''The consent of any employee to the bringing of any such action by the Secretary of Labor, unless such action is dismissed without prejudice on motion of the Secretary of Labor, shall constitute a waiver by such employee of any right of action he may have under subsection (b) of this section for such unpaid wages or unpaid overtime compensation and an additional equal amount as liquidated damages.''

Subsec. (e). Pub. L. 93–259, §25(c), added subsec. (e).

1966—Subsec. (c). Pub. L. 89–601 substituted ''statutes of limitations'' for ''two-year statute of limitations''.

1961—Subsec. (b). Pub. L. 87–30 provided for termination of right of action upon commencement of injunction proceedings by the Secretary of Labor.

1957—Subsec. (d). Pub. L. 85–231 added cls. (1) and (2) and designated existing provisions as cl. (3).

1956—Subsec. (d). Act Aug. 8, 1956, added subsec. (d).

1949—Subsec. (c). Act Oct. 26, 1949, added subsec. (c).

1947—Subsec. (b). Act May 14, 1947, struck out provisions relating to the designation by employee or employees of an agent or representative to maintain an action under this section for and on behalf of all employees similarly situated and inserted provisions relating to the requirement that no employee shall be a party plaintiff unless he gives his consent in writing and such consent is filed with the court.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–151 effective Jan. 1, 1978, see section 15(a) of Pub. L. 95–151, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–601 effective Feb. 1, 1967, except as otherwise provided, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87–30, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment by Pub. L. 85–231 effective upon expiration of ninety days from Aug. 30, 1957, see section 2 of Pub. L. 85–231, set out as a note under section 213 of this title.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

EFFECTIVE DATE OF 1947 AMENDMENT

Section 5(b) of act May 14, 1947, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be applicable only with respect to actions commenced under the Fair Labor Standards Act of 1938, as amended [this chapter], on or after the date of the enactment of this Act [May 14, 1947].''

TRANSFER OF FUNCTIONS

Functions relating to enforcement and administration of equal pay provisions vested by subsecs. (b) and (c) of this section in Secretary of Labor transferred to Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, §1, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

LIABILITY OF STATE, POLITICAL SUBDIVISION, OR INTERSTATE GOVERNMENTAL AGENCY FOR VIOLATIONS BEFORE APRIL 15, 1986, RESPECTING ANY EMPLOYEE NOT COVERED UNDER SPECIAL ENFORCEMENT POLICY

Pub. L. 99–150, §2(c)(1), Nov. 13, 1985, 99 Stat. 788, provided that: ''No State, political subdivision of a State, or interstate governmental agency shall be liable under section 16 of the Fair Labor Standards Act of 1938 [29 U.S.C. 216] for a violation of section 6 [29 U.S.C. 206] (in the case of a territory or possession of the United States), 7 [29 U.S.C. 207], or 11(c) [29 U.S.C. 211(c)] (as it relates to section 7) of such Act occurring before April 15, 1986, with respect to any employee of the State, political subdivision, or agency who would not have been covered by such Act [this chapter] under the Secretary of Labor's special enforcement policy on January 1, 1985, and published in sections 775.2 and 775.4 of title 29 of the Code of Federal Regulations.''

EFFECT OF AMENDMENTS BY PUBLIC LAW 99–150 ON PUBLIC AGENCY LIABILITY RESPECTING ANY EMPLOYEE COVERED UNDER SPECIAL ENFORCEMENT POLICY

Pub. L. 99–150, §7, Nov. 13, 1985, 99 Stat. 791, provided that: ''The amendments made by this Act [see Short Title of 1985 Amendment note set out under section 201 of this title] shall not affect whether a public agency which is a State, political subdivision of a State, or an interstate governmental agency is liable under section 16 of the Fair Labor Standards Act of 1938 [29 U.S.C. 216] for a violation of section 6, 7, or 11 of such Act [29 U.S.C. 206, 207, 211] occurring before April 15, 1986, with respect to any employee of such public agency who would have been covered by such Act [this chapter] under the Secretary of Labor's special enforcement policy on January 1, 1985, and published in section 775.3 of title 29 of the Code of Federal Regulations.''

RULES, REGULATIONS, AND ORDERS PROMULGATED WITH REGARD TO 1966 AMENDMENTS

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89–601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89–601, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

CONSTRUCTION OF 1949 AMENDMENTS WITH PORTAL-TO-PORTAL ACT OF 1947

Section 16(b) of act Oct. 26, 1949, provided that: ''Except as provided in section 3(*o*) [section 203(*o*) of this title] and in the last sentence of section 16(c) of the Fair Labor Standards Act of 1938, as amended [section 216(e) of this title], no amendment made by this Act [amending sections 202, 208, 211 to 217 of this title] shall be construed as amending, modifying, or repealing any provisions of the Portal-to-Portal Act of 1947.''

RETROACTIVE EFFECT OF 1949 AMENDMENTS; LIMITATION OF ACTIONS

Section 16(d) of act Oct. 26, 1949, provided that actions based upon acts or omissions occurring prior to the effective date of act Oct. 26, 1949, which was to be effective ninety days after Oct. 26, 1949, were not prevented by the amendments made to sections 202 to 208, and 211 to 217 of this title by such act, so long as such actions were instituted within two years from such effective date.

CROSS REFERENCES

Amount in controversy immaterial in action arising under act of Congress regulating commerce, see Historical and Revision Notes set out under section 1331 of Title 28, Judiciary and Judicial Procedure.

Applicability of ''area of production'' regulations to employers, see section 261 of this title.

Determination of commencement of future actions, see section 256 of this title.

Extra compensation creditable toward overtime compensation, see section 207 of this title.

Injunction by Secretary of Labor to restrain violations of section 215 of this title, see section 217 of this title.

Jurisdiction of actions arising under act of Congress regulating commerce, see section 1337 of Title 28, Judiciary and Judicial Procedure.

Jurisdiction of claims compensable by contract or custom, see section 252 of this title.

Liability for overtime work performed prior to July 20, 1949, see section 216b of this title.

Liability of employers to United States for violation of Walsh-Healey Act, see section 36 of Title 41, Public Contracts.

Limitation of action under this section, commenced on or after May 14, 1947, see section 255 of this title.

Liquidated damages denied where employer establishes defense of good faith, see section 260 of this title.

Minimum wages payable to employees, see section 206 of this title.

Rate of compensation for overtime, see section 207 of this title.

Reliance by employer in future on administrative rulings as defense, see section 259 of this title.

Reliance by employer on past administrative rulings as defense, see section 258 of this title.

Removal of actions from State courts, see section 1441 et seq. of Title 28, Judiciary and Judicial Procedure.

Venue of action not founded on diversity of citizenship, see section 1391 of Title 28.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 255, 260, 626 of this title; title 2 section 1313; title 3 section 413; title 5 sections 7702, 7703.

§ 216a. Repealed. Oct. 26, 1949, ch. 736, § 16(f), 63 Stat. 920

Section, act July 20, 1949, ch. 352, § 2, 63 Stat. 446, related to liability for overtime work performed prior to July 20, 1949. See section 216b of this title.

§ 216b. Liability for overtime work performed prior to July 20, 1949

No employer shall be subject to any liability or punishment under this chapter (in any action or proceeding commenced prior to or on or after January 24, 1950), on account of the failure of said employer to pay an employee compensation for any period of overtime work performed prior to July 20, 1949, if the compensation paid prior to July 20, 1949, for such work was at least equal to the compensation which would have been payable for such work had subsections (d)(6), (7) and (g) of section 207 of this title been in effect at the time of such payment.

(Oct. 26, 1949, ch. 736, § 16(e), 63 Stat. 920.)

CODIFICATION

Section was enacted as part of the Fair Labor Standards Amendments of 1949, and not as part of the Fair Labor Standards Act of 1938 which comprises this chapter.

''January 24, 1950'' substituted in text for ''the effective date of this Act''. See Effective Date of 1949 Amendment note set out under section 202 of this title.

§ 217. Injunction proceedings

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 215 of this title, including in the case of violations of section 215(a)(2) of this title the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this chapter (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 255 of this title).

(June 25, 1938, ch. 676, § 17, 52 Stat. 1069; Oct. 26, 1949, ch. 736, § 15, 63 Stat. 919; Pub. L. 85–231, § 1(3), Aug. 30, 1957, 71 Stat. 514; Pub. L. 86–624, § 21(c), July 12, 1960, 74 Stat. 417; Pub. L. 87–30, § 12(b), May 5, 1961, 75 Stat. 74.)

AMENDMENTS

1961—Pub. L. 87–30 substituted '', including in the case of violations of section 215(a)(2) of this title the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this chapter (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 255 of this title'' for '': *Provided*, That no court shall have jurisdiction, in any action brought by the Administrator to restrain such violations, to order the payment to employees of unpaid minimum wages or unpaid overtime compensation or an additional equal amount as liquidated damages in such action''.

1960—Pub. L. 86–624 struck out reference to the District Court for Territory of Alaska.

1957—Pub. L. 85–231 included the District Court of Guam within the enumeration of courts having jurisdiction of injunction proceedings.

1949—Act Oct. 26, 1949, included a more precise description of United States courts having jurisdiction to restrain violations and inserted proviso denying jurisdiction to order payment of unpaid minimum wages, overtime, and liquidated damages in injunction proceedings.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87–30, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment by Pub. L. 85–231 effective upon expiration of ninety days from Aug. 30, 1957, see section 2 of Pub. L. 85–231, set out as a note under section 213 of this title.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the ''transition period'', being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96–70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

TRANSFER OF FUNCTIONS

Functions relating to enforcement and administration of equal pay provisions vested by this section in Secretary of Labor transferred to Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, § 1, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

CROSS REFERENCES

Action by employee to recover unpaid minimum wages or unpaid overtime compensation and liquidated damages, see section 216 of this title.

Action by Secretary of Labor to recover unpaid minimum wages or unpaid overtime compensation and liquidated damages, see section 216 of this title.

Child labor provisions, see section 212 of this title.

Criminal penalty for violation of section 215 of this title, see section 216 of this title.

Duty of employer to keep and preserve employment records, see section 211 of this title.

Prohibited acts; prima facie evidence, see section 215 of this title.

Secretary of Labor authorized to bring all actions under this section to enjoin unlawful child labor acts or practices, see section 212 of this title.

Secretary of Labor authorized to bring all injunctive actions under this section to restrain violations of this chapter, see section 211 of this title.

Venue of action not founded on diversity of citizenship, see section 1391 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 212, 216, 626 of this title.

§ 218. Relation to other laws

(a) No provision of this chapter 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 chapter or a maximum work week lower than the maximum workweek established under this chapter, and no provision of this chapter 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 chapter. No provision of this chapter shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this chapter.

(b) Notwithstanding any other provision of this chapter (other than section 213(f) of this title) 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, or

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

shall have his basic compensation fixed or adjusted at a wage rate that is not less than the appropriate wage rate provided for in section 206(a)(1) of this title (except that the wage rate provided for in section 206(b) of this title 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 207(a)(1) of this title.

(June 25, 1938, ch. 676, § 18, 52 Stat. 1069; Pub. L. 89–601, title III, § 306, Sept. 23, 1966, 80 Stat. 841; Pub. L. 90–83, § 8, Sept. 11, 1967, 81 Stat. 222.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (b), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1967—Subsec. (b). Pub. L. 90–83 substituted reference to section 5102(c)(7) of title 5 for reference to par. (7) of section 202 of the Classification Act of 1949 to reflect the amendment of section 5341(a) of title 5 by section 1(97) of Pub. L. 90–83 and struck out provision covering employees described in section 7474 of title 10 in view of the repeal of section 7474 of title 10 by Pub. L. 89–554.

1966—Pub. L. 89–601 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–601 effective Feb. 1, 1967, except as otherwise provided, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

RULES, REGULATIONS, AND ORDERS PROMULGATED WITH REGARD TO 1966 AMENDMENTS

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89–601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89–601, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

§ 219. Separability

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

(June 25, 1938, ch. 676, § 19, 52 Stat. 1069.)

CHAPTER 9—PORTAL-TO-PORTAL PAY

Sec.
251. Congressional findings and declaration of policy.
252. Relief from certain existing claims under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, and the Bacon-Davis Act.
(a) Liability of employer.
(b) Compensable activity.
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253. Compromise and waiver.
(a) Compromise of certain existing claims under the Fair Labor Standards Act of 1938, the Walsh-Healey Act, or the Bacon-Davis Act; limitations.
(b) Waiver of liquidated damages under the Fair Labor Standards Act of 1938.
(c) Satisfaction.
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(e) ''Compromise'' defined.
254. Relief from liability and punishment under the Fair Labor Standards Act of 1938, the Walsh-Healey Act, and the Bacon-Davis Act for failure to pay minimum wage or overtime compensation.
(a) Activities not compensable.
(b) Compensability by contract or custom.
(c) Restriction on activities compensable under contract or custom.
(d) Determination of time employed with respect to activities.
255. Statute of limitations.
256. Determination of commencement of future actions.
257. Pending collective and representative actions.