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—

[Subsection 7(g), which was (f) before the 1966 amendments, was amended by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective September 3, 1961, by striking out "forty hours" both times it appears and inserting the phrase "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) 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.

[The above subsection was added by section 7 of P. L. 81-393, effective Jan. 25, 1950.]

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

[This subsection, which was (g) before the 1966 amendments, was added by Section 7 of P. L. 81-393, effective Jan. 25, 1950. It incorporates part of Section 1 of the Overtime Act (see annotation to Sec. 7(f) above.]

(i) No employer shall be deemed to have violated subsection (a) by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 6, and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods of 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.

[Section 7(i), which was (h) before the 1966 amendments, was added by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective September 3, 1961.] Subsection (i) was amended by P.L. 81-609, effective Feb. 1, 1967, by adding at the end thereof the sentence beginning "In determining . . ." and ending ". . . or guarantee."]

[Subsection (d), (e), (f), (g), and (h) of Section 7 were redesignated as subsections (e), (f), (g), (h), and (i) respectively by P.L. 89-601, effective Feb. 1, 1967.]

(j) No employer engaged in the operation of a hospital shall be deemed to have violated subsection (a) if, pursuant to an agreement or understanding arrived at be-

tween 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.

[Section 7(j) was added by P.L. 89-601 effective Feb. 1, 1967.]

WAGE ORDERS IN PUERTO RICO AND VIRGIN ISLANDS

Sec. 8. (a) The policy of this Act with respect to industries or enterprises in Puerto Rico and the Virgin Islands engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the objective of the minimum wage prescribed pursuant to paragraph (1) of section 6(a) in each such industry. The Administrator shall from time to time convene an industry committee or committees, appointed pursuant to section 5, and any such industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 6 by employers in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce in any such industry or classification therein. Minimum rates of wages established in accordance with this section which are not equal to the minimum wage rate prescribed in paragraph (1) of Section 6(a) shall be reviewed by such 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.

[Sec. 8(a) was amended by Public Law 85-750, 85th Congress, H.R. 12967, approved August 25, 1958, to add the last sentence.

Section 8 of P. L. 81-393, effective Jan. 25, 1950, substituted the above form of this subsection, except for the last sentence, for subsection 8(a) of the original statute, which read as follows:

"(a) with a view to carrying out the policy of this Act by reaching as rapidly as is economically feasible without substantially curtailing employment, the objective of a universal minimum wage of 40 cents an hour in each industry engaged in commerce or in the production of goods for commerce, the Administrator shall from time to time convene the industry committee for each such industry, and the industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 6 by employers engaged in commerce or in the production of goods for commerce in such industry or classification therein.

The subsection was further amended by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective September 3, 1961, by inserting after the word "industries" in the first sentence the words "or enterprises"; and by inserting after words "production of goods for commerce" in the second sentence the phrase "or in any enterprise engaged in commerce or in the production of goods for commerce".]

(b) Upon the convening of any such industry committee, the Administrator shall refer to it the question of the minimum wage rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, shall after due notice hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this Act. The committee shall recommend to the 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 Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands.

[Sec. 8(b) was amended by Sec. 5(b) of the Fair Labor Standards Amendments of 1955, effective August 12, 1955, by striking out the word "may" following the words "or any authorized subcommittee thereof" and inserting the words "shall after due notice."

Section 8 of P. L. 81-393, effective Jan. 25, 1950, added the following words at the end: "and will not give any industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands."]

(c) The industry committee shall recommend such reasonable classifications within any industry as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum wage rate (not in excess of that prescribed pursuant to paragraph (2) of section 6(a)) which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum-wage rate which the committee determines will not substantially curtail employment in such classification. In determining whether such classifications should be made in any industry, in making such classifications, and in determining the minimum wage rates for such classifications, no classification 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:

[Sec. 8(c) was amended by Sec. 5(c) of the Fair Labor Standards Amendments of 1955, effective August 12, 1955 to strike out "and the administrator" in the clause immediately above. It previously read: "but the industry committee and the administrator shall consider among other relevant factors the following:"]

(1) competitive conditions as affected by transportation, living and productions 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.

[Section 8 of P.L. 81-393, effective Jan. 25, 1950, deleted the words "for any industry" which, in the original statute occurred in the first line of this subsection after the words "Committee". It also substitutes the words "not in excess of that prescribed pursuant to paragraph 2 of Section 6(a)," which appear in parenthesis in lines 7-9 of this subsection. The parenthetical words in the original statute "were not in excess of 40 cents an hour."]

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

[Sec. 8(d) was amended by Sec. 5(d) of the Fair Labor Standards Amendments of 1955, effective August 12, 1955, to substitute the above subsection (d) for that which previously read as follows:

"(d) the industry committee shall file with the Administrator a report containing its recommendations with respect to the matters referred to it. Upon the filing of such report, the Administrator, after due

notice to interested persons, and giving them an opportunity to be heard, shall by order approve and carry into effect the recommendations contained in such report, if he finds that the recommendations are made in accordance with law, are supported by the evidence adduced at the hearing, and, taking into consideration the same factors as are required to be considered by the industry committee, will carry out the purposes of this section; otherwise he shall disapprove such recommendations. If the Administrator disapproves such recommendations, he shall again refer the matter to such committee, or to another industry committee for such industry (which he may appoint for such purpose) for further consideration and recommendations."

The above subsection was reenacted by Sec. 8 of P.L. 81-393, effective Jan. 25, 1950.]

(e) Orders issued under this section shall define the industries and classifications therein to which they are to apply, and shall contain such terms and conditions as the 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.

[Sec. 8(e) was amended by Sec. 5(e) of the Fair Labor Standards Amendments of 1955, effective August 12, 1955, to strike out the last sentence which read:

"No such order shall take effect until after due notice is given of the issuance thereof by publication in the Federal Register and by such other means as the Administrator deems reasonably calculated to give to interested persons general notice of such issuance."

Section 8 P.L. 81-393, effective Jan. 25, 1950, deleted the former subsection (e) and substituted the paragraph immediately above together with the deleted sentence. The former subsection 8(e) read as follows:

"(e) No order issued under this section with respect

to any industry prior to the expiration of seven years from the effective date of section 6 shall remain in effect after such expiration, and no order shall be issued under this section with respect to any industry on or after such expiration, unless the industry committee by a preponderance of the evidence before it recommends, and the Administrator by a preponderance of the evidence adduced at the hearing finds, that the continued effectiveness or the issuance of the order, as the case may be, is necessary in order to prevent substantial curtailment of employment in the industry."]

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

[The above Section 8(f), as renumbered by Section 8 of P.L. 81-393, effective Jan. 25, 1950, was subsection (g) of the original act.]

ATTENDANCE OF WITNESSES

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

COURT REVIEW

Sec. 10. (a) Any person aggrieved by an order of the Secretary issued under section 8 may obtain a review of such order in the United States Court of Appeals for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within

60 days after the entry of such order a written petition praying that the order of the Secretary be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record of the industry committee upon which the order complained of was entered, as provided in Section 2112 of Title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part, so far as it is applicable to the petitioner. The review by the court shall be limited to questions of law, and findings of fact by such industry committee when supported by substantial evidence shall be conclusive. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been urged before such industry committee or unless there were reasonable grounds for failure so to do. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce such evidence in the proceedings before such industry committee, the court may order such additional evidence to be taken before an industry committee and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. Such industry committee may modify the initial findings by reason of the additional evidence so taken, and shall file with the court such modified or new findings which if supported by substantial evidence shall be conclusive, and shall also file its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in Section 1254 of title 28 of the United States Code.

[Sec. 10(a) was amended by Sec. 5(f) of the Fair Labor Standards Amendments of 1955, effective August 12, 1955, to substitute "Secretary" and "in-

dustry committee" for "Administrator." The section was further amended by the Judicial Review Act (P.L. 85-791), approved August 28, 1958, to revise the second and third sentence to read as above.]

(b) The commencement of proceedings under subsection (a) 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.

INVESTIGATIONS, INSPECTIONS, RECORDS, AND HOMEWORK REGULATIONS

Sec. 11. (a) 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 Act, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of the provisions of this Act. Except as provided in section 12 and in subsection (b) of this section, the 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 12, the Administrator shall bring all actions under section 17 to restrain violations of this Act.

(b) With the consent and cooperation of State agencies charged with the administration of State Labor laws, the Administrator and the Secretary of Labor may, for the purpose of carrying out their respective functions and

duties under this Act, utilize the service of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

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

(d) The 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 Act, and all existing regulations or orders of the Administrator relating to industrial homework are hereby continued in full force and effect.

[This subsection was added by Section 9 of P.L. 81-393, effective Jan. 25, 1950.]

CHILD LABOR PROVISIONS

Sec. 12. (a) No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed: Provided, That any such shipment or delivery for shipment or sale 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.

[Section 10(a) of P.L. 81-393, effective Jan. 25, 1950, deleted the following words from the beginning of the above subsection: "After the expiration of 120 days from the date of the enactment of this Act." It added also the first proviso beginning at line 9 and ending at line 20 ("That any such shipment * * * prohibited by this subsection, and provided further").]

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

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

[This subsection was added by Section 10(b) of P.L. 81-393, effective Jan. 25, 1950. It was further amended by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective September 3, 1961 to add this phrase at the end of the sentence; "or in any enterprise engaged in commerce or in the production of goods for commerce."]

EXEMPTIONS

Sec. 13 (a) The provisions of sections 6 and 7 shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools) or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act, except that an employee of a retail or service establishment shall not be excluded from the definition of employee 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

[Section 13(a)(1) in the original statute declared:

"(a) The provisions of sections 6 and 7 shall not apply with respect to (1) 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); or".]

[Section 13(a)(1) was amended by P.L. 89-601, effective Feb. 1, 1967, to add "(including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary school)".]

[a] (2) any employee employed by any retail or service establishment (except an establishment or employee engaged in laundering, cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described in section 3(s)(4)), if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section

3(s) or such establishment has an annual dollar volume of sales which is less than $250,000 (exclusive of excise taxes at the retail level which are separately stated).

[Section 13(a)(2) was amended by P.L. 89-601, effective Feb. 1, 1967, by deleting the first five paragraphs and inserting a new paragraph. Prior to the amendments, the provisions read as follows:]

'[a](2) any employee employed by any retail or service establishment, more than 50 per centum of which establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, if such establishment—

"(i) is not in an enterprise described in Section 3(s), or

"(ii) is in such an enterprise and is a hotel, motel, restaurant, or motion picture theatre; or in an amusement or recreational establishment that operates on a seasonal basis, or

"(iii) is in such an enterprise and is a hospital, or an institution which is primarily engaged in the care of the sick, the aged, the mentally ill or defective, residing on the premises of such institution, or a school for physical or mentally handicapped or gifted children, or

(iv) is in such an enterprise and has an annual dollar volume of sales (exclusive of excise taxes at the retail level which are separately stated) which is less than $250,000."

[Section 13(a)(9) below provides an exemption similar to that provided in the deleted paragraph (ii).]

A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry; or

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

> [Section 13(a)(3), which provided an exemption for laundries and dry cleaning establishments, was repealed by P.L. 89-601, effective Feb. 1, 1967, and the new paragraph dealing with amusement or recreational establishments inserted in its place. The laundry and dry cleaning exemption was incorporated in Section 13(a)(2) above. Prior to the amendments, Section 13(a)(3) read as follows:
>
> [a] (3) any employee employed by any establishment engaged in laundering, cleaning or repairing clothing or fabrics, more than 50 per centum of which establishment's annual dollar volume of sales of such services is made within the State in which the establishment is located: Provided, That 75 per centum of such establishment's annual dollar volume of sales of such services is made to customers who are not engaged in a mining, manufacturing, transportation, or communication business; or"

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

> [Subparagraphs (2), (3), and(4), as they read prior to the 1961 and 1966 amendments, were inserted by Section 11 P. L. 81-393, effective Jan. 25, 1950, in place of the former subparagraph (2), which read as follows:

"(2) any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce."]

[a] (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

[Section 13(a)(5) was amended to read as above by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective September 3, 1961. The section previously stated:

"(a)(5) any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including the going to and returning from work and 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 by-products thereof; or"

Section 11 of P.L. 81-393, effective Jan. 25, 1950, added "(other than canning)" after the word "processing" in the above text and deleted the word "canning" which, in the original statute, occurred after the word "freezing."]

[a] (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

[Section 13(a)(6) was amended by P.L. 89-601, effective Feb. 1, 1967, by deleting the existing paragraph and substituting the paragraph above. Prior to the amendments, Section 13(a)(6) read as follows:

> "[a](6) 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 share-crop basis, and which are used exclusively for supply and storing of water for agricultural purposes; or"

Section 11 of 81-393, effective Jan. 25, 1950, added in the above paragraph, these words in lines 2 to 8: "or in connection with * * * agricultural purposes."

See Section 13(b)(12) below for a new overtime exemption for employees of non-profit irrigation companies.]

[a] (7) any employee to the extent that such employee is exempted by regulations, orders, or certificates of the Secretary issued under section 14; or

[Section 13(a)(7) was amended to substitute "the Secretary" for "the Administrator" by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective September 3, 1961. This section was further amended by P. L. 89-601, effective Feb. 1, 1967, by changing "or orders" to "orders, or certificates".]

[a] (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

[Section 13(8)(a) was amended by P.L. 89-601, effective Feb. 1, 1967, by substituting "where published" for "where printed and published".]

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

[Section 13(a)(9), which provided an exemption for employees of local transit systems, was deleted by P.L. 89-601, effective Feb. 1, 1967, and replaced by the paragraph above providing an exemption for employees of motion picture theaters. A similar exemption previously was provided by Section 13(a)(2)(ii). Prior to the amendments, Section 13(a)(9) read as follows:

"[a](9) any employee of a street, suburban, or interurban electric railway, or local trolley or motorbus carrier, not in an enterprise described in section 3(s)(2); or"

[Section 13(a)(9) previously was amended by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective September 3, 1961, to delete the phrase "not included in other exemptions contained in this section"; and to substitute the phrase "not in an enterprise described in section 3(s)(2)."]

[Section 13(a)(10) was deleted and the subsequent paragraphs were renumbered by P.L. 89-601, effective Feb. 1, 1967. Prior to the amendments, Section 13(a)(10) read as follows:

"[a] (10) any individual employed within the area of production (as defined by the Secretary), engaged in handling, packing, storing, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products; or"

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

[Section 11, now (10), of P. L. 81-393, effective Jan. 25, 1950, substituted in the last two lines of this paragraph the words "not more than seven hundred and fifty stations" for the words "less than five hundred stations."

Section 13(a)(11), now (10) was further amended by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective September 3, 1961, to delete the phrase "in a public telephone exchange" following the word "employed" and to insert the phrase "by an independently owned public telephone company."]

[Section 13(a)(12) was deleted by P.L. 89-601, effective Feb. 1, 1967, and Section 13(a)(13) was renumbered Section 13(a)(11). Prior to the amendments, Section 13(a)(12) provided an exemption for "any employee of an employer engaged in the business of operating taxicabs." A new Section 13(b)(17) below restricts the exemption to the overtime provisions and to "drivers" of an employer engaged in the business of operating taxicabs.]

[a] (11) any employee or proprietor in a retail or service establishment which qualifies as an exempt retail or

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

[Section 13(a)(13), now (11) was amended by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective September 3, 1961, to insert the phrase "which qualifies as an exempt retail or service establishment under clause (2)" after the word "establishment." The paragraph was previously added by Section 11 of P. L. 81-393, effective Jan. 25, 1950.]

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

[Section 13(a)(14), now (12), was amended by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective September 3, 1961, to insert the phrase "on a vessel other than an American vessel" after the word "seaman." The paragraph, numbered as subparagraph (3) in the original statute, was reenacted by Section 11 of P.L. 81-393, effective Jan. 25, 1950, with the above number.]

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

[This paragraph was added by Section 11 of P.L. 81-393, effective Jan. 25, 1950. It was further amended by P. L. 89-601, effective Feb. 1, 1967, by changing the number of employees permitted for the exemption from "twelve" to "eight."]

[a] (14) any agricultural employee employed in the growing and harvesting of shade-grown tobacco who is engaged in the processing (including, but not limited to, drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and bailing) of such tobacco, prior to the stemming process, for use as cigar wrapper tobacco.

[Section 13(a)(21), now (14), was added by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective September 3, 1961. It was amended by P.L. 89-601, effective Feb. 1, 1967, by changing the semicolon at the end to a period.]

[In addition to deleting Sections 13(a)(10) and (12), P.L. 89-601, effective Feb. 1, 1967, deleted Sections 13(a)(16) (17), (18), (19), (20), and (22), and Sections 13(a)(11), (13), (14), (15) and (21) were renumbered as Sections 13(a)(10), (11), (12), (13), and (14). Prior to the amendments, the deleted subsections (16), (17), (18), (19), (20), and (22) read as follows:

"[a](16) 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 livestock auction operations at a wage rate not less than that prescribed by section 6(a)(1); or

[Section 13(a)(16) previously was added by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective Sept. 3, 1961.]

"[a](17) 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:

Provided, That no more than five employees are employed in the establishment in such operations; or"

[Section 13(a)(17) previously was added by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective Sept. 3, 1961.]

"[a](18) any employee engaged in ginning of cotton for market, in any place of employment located in a country where cotton is grown in commercial quantities; or"

[Section 13(a)(18) previously was added by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective Sept. 3, 1961.]

[a](19) any employee of a retail or service establishment which is primarily engaged in the business of selling automobiles, trucks, or farm implement; or"

[Section 13(a)(19) previously was added by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective Sept. 3, 1961.]

"[a](20) any employee of a retail or service establishment who is employed primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs; or"

[Section 13(a)(20) previously was added by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective Sept. 3, 1961.]

"[a](22) 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."

[Section 13(a)(22) previously was added by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective Sept. 3, 1961.]

(b) The provisions of section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or

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

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

[The above paragraph, formerly subparagraph (4) of subsection (a) of Section 13, was reenacted unchanged, but numbered as shown. Section 11 of P. L. 81-393, effective Jan. 25, 1950.]

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

[Section 13(b)(4) was amended by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective September 3, 1961, to insert, the phrase "processing, marketing, freezing, curing, storing, packing for shipment, or distributing" following the word "canning". The paragraph was added by Section 11 of P.L. 81-393, effective Jan. 25, 1950.]

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

[This paragraph was added by Section 11 of P.L. 81-393, effective Jan. 25, 1950.]

[b] (6) any employee employed as a seaman; or

[Section 13(b)(6) was added by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective September 3, 1961.]

(7) any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency; or

[Section 13(b)(7) was amended by P.L. 89-601, effective Feb. 1, 1967, to limit the exemption as specified above. Prior to the amendments, the exemption applied to "any employee of a street, suburban, or interurban electric railway, or local trolley or motorbus carrier."]

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

[Section 13(b)(8), which provided an exemption from the overtime requirements, for "any employee of a gasoline service station" was deleted by P.L. 89-601, effective Feb. 1, 1967, and was replaced by the above exemption. See Section 3 (s)(1) above for the "enterprise" coverage test for gasoline stations. Also see Section 3(s)(4) above for coverage of hospitals and Section 13(a)(2) for exemption for retail or service establishments.]

[b] (9) any employee employed as an announcer, news editor, or chief engineer by a radio or television station the

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

[Section 13(b)(9) was added by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective September 3, 1961.]

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

[Section 13(b)(10), which provided an overtime exemption for employees of certain distributors of petroleum, was deleted by P.L. 89-601, effective Feb. 1, 1967, and was replaced by the exemption provided above. Section 13(a)(19) previously provided a similar exemption from both the minimum-wage and overtime requirements for the employees described above. Prior to the amendments, Section 13(b)(10) read as follows:]

"[b](10) any employee of 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 not more than $1,000,000 exclusive of excise taxes, and (B) more than 75 per centum of such enterprise 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; or who are engaged in the bulk distribution of such products for resale; or"

[The exemption for the bulk distribution of petroleum products was transferred to Section 7(b)(3).]

[b] (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 7(a); or"

[Section 13(b)(11) was added by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective Sept. 3, 1961. This section was further amended by P.L. 89-601, effective Feb. 1, 1967, by changing the period at the end of paragraph (11) to a semicolon and inserting "or" and adding new paragraphs (12), (13), (14), (15), (16), (17), (18), and (19).]

[b](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 or water for agricultural purposes; or

[Section 13(b)(12) is similar to language deleted from Section 13(a)(6), which provided an exemption from both the minimum-wage and overtime requirements. The changes were made by P.L. 89-601, effective Feb. 1, 1967.]

[b](13) any employee with respect to his employment in agriculture by a farmer, notwithstanding other employ-

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

[Section 13(b)(13) is similar to the deleted Section 13(a)(16), which provided an exemption from both the minimum-wage and overtime requirements. The changes were made by P.L. 89-601, effective Feb. 1, 1967.]

[b](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

[Section 13(b)(14) is the same as the deleted Section 13(a)(17), which provided an exemption from both the minimum-wage and overtime requirements. The changes were made by P.L. 89-601, effective Feb. 1, 1967.]

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

[Section 13(b)(15) is the same as to the deleted Section 13(a)(18), which provided an exemption from both the minimum-wage and overtime requirements. The changes were made by P.L. 89-601, effective Feb. 1, 1967.]

[b](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

[Section 13(b)(16) is the same as the deleted Section 13(a)(22), which provided an exemption from both the minimum-wage and overtime requirements. The changes were made by P.L. 89-601, effective Feb. 1, 1967.]

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

[Section 14(b)(17) replaced Section 13(a)(12), which provided an exemption from both the minimum-wage and overtime requirements for "*any employee* employed by an employer engaged in the business of operating taxicabs." The changes were made by P.L. 89-601, effective Feb. 1, 1967.]

[Section 13(b)(18) is the same, as the deleted Section 13(a)(20), which provided an exemption from both the minimum-wage and overtime requirements. The changes were made by P.L. 89-601, effective Feb. 1, 1967.]

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

[Section 13(b)(18) is the same as the deleted Section 13(a) 20, which provided an exemption from both the minimum-wage and overtime requirements. The

changes were made by P.L. 89-601, effective Feb. 1, 1967.]

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

[Section 13(b)(19) was added by P.L. 89-601, effective Feb. 1, 1967.]

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

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

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

[Section 13(c) was amended by P.L. 89-601, effective Feb. 1, 1967, by adding paragraphs (1), (2), and (3). Prior to the amendments, Section 13(c) read as follows:

(c) The provisions of section 12 relating to child labor shall not apply with respect to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed or to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions"]

[The Section previously was amended by P.L. 81-393, effective Jan. 25, 1950, which made three changes in this paragraph. First, it substituted these words in lines 4-7, "outside of school hours for the school district where such employee is living while he is so employed," replacing the prior language, "while not legally required to attend school." Second, it added the words "or performer" after the word "actor" in the third line from the end. Third, it added the last six words, "or in radio or television productions."]

(d) The provisions of sections 6, 7, and 12 shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer or to any homeworker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths.)

[Section 13(d) was amended by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective September 4, 1961, to insert the following at the end of the sentence: "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)." The subsection, as it read before the 1961 amendments, was added by section 11 of P.L. 81-393, effective Jan. 25, 1950.]

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

factors set forth in section 6 (a) (3), that economic conditions warrant such action.

[Sec. 13(e) was added by amendment approved August 8, 1956 (Public Law 1023, Ch. 1035, S. 3956.]

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

[Sec. 13(f) was added by amendment approved August 30, 1957 (Public Law 85231, H.R. 7458, effective November 29, 1957). [Section 13(f) was amended by P.L. 89-601, effective Feb. 1, 1967, by deleting "and the Canal Zone" and inserting in its place "Eniwetok Atoll; Kwajalein Atoll; Johnston Island; and the Canal Zone."]

LEARNERS, APPRENTICES, AND HANDICAPPED WORKERS

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

(b) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment of full-time students, regardless of age but in compliance

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

(c) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by certificate or order provide for the employment of full-time students, regardless of age but in compliance with

applicable child labor laws, on a part-time basis in agriculture (not to exceed twenty hours in any workweek) or on a part-time or a full-time basis in agriculture during school vacations, at a wage rate not less than 85 per centum of the minimum wage applicable under section 6. Before the Secretary may issue a certificate or order under this subsection he must find that such employment will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under this subsection.

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

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

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

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

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

(3) (A) The Secretary may by regulation or order provide for the employment of handicapped clients in

work activities centers under special certificates at wages which are less than the minimums applicable under section 6 of this Act or prescribed by paragraph (1) of this subsection and which constitute equitable compensation for such clients in work activities centers.

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

[Section 14 was amended by P. L. 89-601, effective Feb. 1, 1967, to delete the existing language and substitute the above. Prior to the amendments Section 14 read as follows:

"Sec. 14. The Administrator, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for (1) the employment of learners, of apprentices, of messengers employed primarily in delivering letters and messages, and of full-time students outside of their school hours in any retail or service establishment: Provided, That such employment is not of the type ordinarily given to a full-time employee, under special certificates issued pursuant to regulations of the Administrator, at such wages lower than the minimum wage applicable under section 6 and subject to such limitations as to time, number, proportion, and length of service as the Administrator shall prescribe, and (2) the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, under special certificates issued by the Administrator, at such wages lower than the minimum wage applicable under section 6 and for such period as shall be fixed in such certificates."

Clause (1) of section 14 previously was amended by the Fair Labor Standards Amendments of 1961,

approved May 5, 1961, effective Sept. 3, 1961, by striking out "and" after "apprentices" and inserting after "messages," the following "and of full-time students outside of their school hours in any retail or service establishment: Provided, That such employment is not of the type ordinarily given to a full-time employee."

Section 12 of P.L. 81-393, effective Jan. 25, 1950 substituted the word "primarily" for "exclusively" after the word "employed" in the seventh line of this section.]

PROHIBITED ACTS

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

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

[Section 13(a) of P.L. 81-393, effective Jan. 25, 1950, added the last 11 lines in this paragraph, namely: "and

except that such transportation * * * deemed unlawful."]

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

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

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

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

[Section 13 (b) of P.L. 81-393, effective Jan. 25, 1950, added the words in lines 3 and 4 of this paragraph which read: "or continued in effect under the provisions of section 11(d)."]

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

PENALTIES

Sec. 16. (a) Any person who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person

shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

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

The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 17 in which restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 6 or section 7 of this Act by an employer liable therefor under the provisions of this subsection."

[Section 16(b) was amended to add the last sentence by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective September 3, 1961.]

(c) The Administrator is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 6 or section 7 of this Act, and the agreement of any employee to accept such payment shall upon pay-

ment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. When a written request is filed by any employee with the Administrator claiming unpaid minimum wages or unpaid overtime compensation under section 6 or section 7 of this Act, the Administrator may bring an action in any court of competent jurisdiction to recover the amount of such claim: Provided, That this authority to sue shall not be used by the Administrator in any case involving an issue of law which has not been settled finally by the courts, and in any such case no court shall have jurisdiction over such action or proceeding initiated or brought by the Administrator if it does involve any issue of law not so finally settled. The consent of any employee to the bringing of any such action by the Administrator, unless such action is dismissed without prejudice on motion of the Administrator, shall constitute a waiver by such employee of any right of action he may have under subsection (b) of this section for such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. Any sums thus recovered by the Administrator 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 Administrator, 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 Administrator under this subsection for the purposes of the statutes of limitations provided in section 6(a) of the Portal-to-Portal Act of 1947, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.

[This subsection (c) was added by Section 14 of P.L. 81-393, effective Jan. 25, 1950. This subsection

was further amended by P.L. 89-601, effective Feb. 1, 1967 by substituting "statutes" for "two-year Statute."]

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

[Sec. 16(d) was added by amendment approved August 8, 1956 (Public Law 1023, Ch. 1035, S. 3956). Subsections (1) and (2) were added by amendment approved August 30, 1957 (Public Law 85231, H.R. 7458), effective November 29, 1957.]

INJUNCTION PROCEEDINGS

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

[Section 17 was amended to read as above by the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective September 3, 1961. The section previously stated:

"Sec. 17. The district courts, together with the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, and the District Court of the Virgin Islands shall have jurisdiction for cause shown, to restrain violations of section 15: 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."

This section was rewritten by Section 15 of P.L. 81-393, effective Jan. 25, 1950. The prior text was as follows:

"The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 20 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" approved October 15, 1914, as amended (U. S. C., 1943 edition, title 28, sec. 381) to restrain violations of section 15."]

RELATION TO OTHER LAWS

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

applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act.

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

(1) described in paragraph (7) of section 202 of the Classification Act of 1949 (5 U.S.C. 1082 (7)) whose compensation is required to be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates, and any Federal employee in the Canal Zone engaged in employment of the kind described in such paragraph (7), or

(2) described in section 7474 of title 10, United States Code, whose rates of wages are established to conform, as nearly as is consistent with the public interest, with those of private establishments in the immediate vicinity, or

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

[Section 18 was amended by P.L. 89-601, effective Feb. 1, 1967, by inserting "(a)" immediately after "Sec. 18." and adding subsection "(b)" at the end thereof.]

SEPARABILITY OF PROVISIONS

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

MISCELLANEOUS AND EFFECTIVE DATE OF 1949 AMENDMENTS

[Section 16 of Fair Labor Standards Amendments of 1949 (P.L. 81-393, effective Jan. 25, 1950.]

[Effective Date of Amendments]

(a) The amendments made by this Act shall take effect upon the expiration of ninety days from the date of its enactment; except that the amendment made by section 4 shall take effect on the date of its enactment.

[Relation to Portal Act]

(b) Except as provided in section 3(o) and in the last sentence of section 16(c) of the Fair Labor Standards Act of 1938, as amended, no amendment made by this Act shall be construed as amending, modifying, or repealing any provision of the Portal-to-Portal Act of 1947.

[Effect on Administrative Rulings and Interpretations]

(c) 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 Administration or the Secretary, in effect under the provisions of the Fair Labor Standards Act of 1938, as amended, on the effective date of this Act, 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 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.

[Limitation on Employer Liability]

(d) No amendment made by this Act shall affect any penalty or liability with respect to any act or omission occurring prior to the effective date of this Act: but, after the expiration of two years from such effective date, no action shall be instituted under section 16(b) of the Fair Labor Standards Act of 1938, as amended, with respect to any liability accruing thereunder for any act or omission, occurring prior to the effective date of this Act.

[Incorporation of Sec. 2 of Overtime Act]

(e) No employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended (in any action or proceeding commenced prior to or on or after the effective date of this Act), 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 section 7(d)(6) and (7) and section 7(g) of the Fair Labor Standards Act of 1938, as amended, been in effect at the time of such payment.

[Repeal of Overtime Act]

(f) Public Law 177, Eighty-first Congress, approved July 20, 1949, is hereby repealed as of the effective date of this Act.

STUDIES BY SECRETARY AND EFFECTIVE DATE OF 1961 AMENDMENTS

[Sections 13 and 14 of the Fair Labor Standards Amendments of 1961, approved May 5, 1961, effective September 3, 1961]

[Study Of Agricultural Handling And Processing Exemptions And Rates Of Pay In Hotels, Motels, Restaurants, And Other Food Service Enterprises]

Sec. 13. The Secretary of Labor shall study the complicated system of exemptions now available for the handling and processing of agricultural products under such Act and particularly sections 7(b)(3), 7(c), and 13(a)(10), and the complex problems involving rates of pay of employees in hotels, motels, restaurants, and other food service enterprises who are exempted from the provisions of this Act, and shall submit to the second session of the Eighty-seventh Congress at the time of his report under section 4(d) of such Act a special report containing the results of such study and information, data and recommendations for further legislation designed to simplify and remove the inequities in the application of such exemptions.

[Effective Date]

Sec.14. The amendments made by this Act shall take effect upon the expiration of one hundred and twenty days after the date of its enactment, 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, including amendments made by this Act, may be exercised by the Secretary on and after the date of enactment of this Act.

Fair Labor Standards Amendments of 1966
Title VI—Miscellaneous

(Note: The amendments made by Titles I through V of the Fair Labor Standards Amendments of 1966 are integrated into the text of the basic statute.)

Statute of Limitations

(a) Section 16(c) of such Act is amended by striking out "two-year statute" and by inserting in lieu thereof "statutes".

(b) Section 6(a) of the Portal-to-Portal Act of 1947 (Public Law 49, Eightieth Congress) is amended by in-

serting before the semicolon at the end thereof the following: ", except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued".

EFFECTIVE DATE

Except as otherwise provided in this Act, the amendments made by this Act shall take effect on February 1, 1967. On and after the date of the enactment of this Act the Secretary is authorized to promulgate necessary rules, regulations, or orders with regard to the amendments made by this Act.

STUDY OF EXCESSIVE OVERTIME

The Secretary of Labor is hereby instructed to commence immediately a complete study of present practices dealing with overtime payments for work in excess of forty hours per week and the extent to which such overtime work impedes the creation of new job opportunities in American industry. The Secretary is further instructed to report to the Congress by July 1, 1967, the findings of such survey with appropriate recommendations.

CANAL ZONE EMPLOYEES AND PANAMA CANAL STUDY

The Secretary of Labor, in cooperation with the Secretary of Defense and the Secretary of State, shall (1) undertake a study with respect to (A) wage rates payable to Federal employees in the Canal Zone engaged in employment of the kind described in paragraph (7) of section 202 of the Classification Act of 1949 (5 U.S.C. 1082(7)) and (B) the requirements of an effective and economical operation of the Panama Canal, and (2) report to the Congress not later than July 1, 1968, the results of his study together with such recommendations as he may deem appropriate.

STUDY OF WAGES PAID HANDICAPPED CLIENTS IN SHELTERED WORKSHOPS

The Secretary of Labor is hereby instructed to commence immediately a complete study of wage payments to handi-

capped clients of sheltered workshops and of the feasibility of raising existing wage standards in such workshops. The Secretary is further instructed to report to the Congress by July 1, 1967, the findings of such study with appropriate recommendations.

PREVENTION OF DISCRIMINATION BECAUSE OF AGE

The Secretary of Labor is hereby directed to submit to the Congress not later than January 1, 1967 his specific legislative recommendations for implementing the conclusions and recommendations contained in his report on age discrimination in employment made pursuant to section 715 of Public Law 88-352. Such legislative recommendations shall include, without limitation, provisions specifying appropriate enforcement procedures, a particular administering agency, and the standards, coverage, and exemptions, if any, to be included in the proposed enactment.