81ST CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 267

# FAIR LABOR STANDARDS AMENDMENTS OF 1949

MARCH 16, 1949.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

## REPORT

[To accompany H. R. 3190]

The Committee on Education and Labor, to whom was referred the bill (H. R. 3190) to provide for the amendment of the Fair Labor Standards Act of 1938 and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The committee amendment strikes out all after the enacting clause and inserts in lieu thereof the following:

That this Act may be cited as the "Fair Labor Standards Amendments of 1949."

SEC. 2. The Fair Labor Standards Act of 1938, as amended (29 U. S. C. 201–219), is hereby amended to read as follows:

"SEC. 1. This Act may be cited as the 'Fair Labor Standards Act of 1949.'

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

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

"DEFINITIONS

"SEC. 3. As used in this Act—

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

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

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

"(d) 'Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

"(e) 'Employee' includes any individual employed by an employer.

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

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

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

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

"(j) 'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary 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 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 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 certifying that such person is above the oppressive child-labor age. The Secretary 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 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 tips received by such employee for which records are kept by the employer in accordance with regulations of the Secretary, and includes the reasonable cost, as determined by the Secretary, 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 in the wage paid to any employee if the furnishing of such facilities is an incident of and necessary to his employment and such facilities are practicably available only from the employer.

"ADMINISTRATION

"SEC. 4. (a) The provisions of this Act shall be administered by the Secretary of Labor (in this Act referred to as the 'Secretary') and, subject to his direction

and control by such officers and agencies of the Department of Labor as the Secretary may designate. The Wage and Hour Division created by the Fair Labor Standards Act of 1938 is hereby continued in the Department of Labor as the Bureau of Wages and Hours. The Bureau shall be administered under the direction and control of the Secretary by an Administrator, to be known as the Administrator of Wages and Hours, who shall be appointed by the President by and with the advice and consent of the Senate. The Administrator of the Wage and Hour Division under the Fair Labor Standards Act of 1938 shall be the Administrator of Wages and Hours under this Act unless and until a successor is appointed pursuant to this section. The Administrator of Wages and Hours shall receive compensation at the rate of $15,000 a year.

"(b) The Secretary may, subject to the civil-service laws, appoint such employees as he deems necessary to carry out his functions and duties under this Act and shall fix their compensation in accordance with the Classification Act of 1923, as amended. The Secretary may establish and utilize such regional, local or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed by the Secretary may appear for and represent the Secretary in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the Department of Labor for the administration of this Act, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

"(c) The Secretary shall have power to make, issue, amend, and rescind such regulations and orders as are necessary or appropriate to carry out any of the provisions of this Act, to prevent the circumvention or evasion thereof and to safeguard the minimum wage rates, the maximum hours and the child labor provisions thereof. No provision of this Act imposing any liability or disability shall apply to any act done or omitted in good faith in conformity with any such regulation or order, notwithstanding that such regulation or order may, after such act or omission, be amended or rescinded or determined by judicial authority to be invalid for any reason.

"(d) The Secretary or his duly authorized representative may exercise any or all of his powers under this Act in any place.

"(e) The Secretary shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this Act as he may find advisable.

"SPECIAL INDUSTRY COMMITTEES FOR PUERTO RICO AND THE VIRGIN ISLANDS

"SEC. 5. (a) The Secretary shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, or the Secretary may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under section 6 to employees therein in particular industries. An industry committee appointed under this subsection shall be composed of residents of such island or islands where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of Puerto Rico and the Virgin Islands. In determining the minimum rate or rates of wages to be paid, and in determining classifications, such industry committees and the Secretary shall be subject to the provisions of section 8.

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

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

legal, stenographic, clerical, and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the committee.

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

"MINIMUM WAGES

"SEC. 6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce, and every employer who is engaged in commerce or in the production of goods for commerce shall pay to each of his employees employed in or about or in connection with any enterprise where he is so engaged, wages at the following rates—

"(1) not less than 75 cents an hour;

"(2) if such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer which shall yield, to the proportion or class of employees prescribed by regulation or order, not less than the applicable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The Secretary, 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.

"(b) The provisions of paragraph (1) of subsection (a) of this section shall be superseded in the case of any employee in Puerto Rico or the Virgin Islands only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued pursuant to the recommendations of a special industry committee appointed pursuant to section 5: *Provided*, That the wage order in effect prior to the effective date of this Act for any industry in Puerto Rico or the Virgin Islands shall apply to every employee in such industry covered by subsection (a) of this section until superseded by a wage order hereafter issued pursuant to the recommendations of a special industry committee appointed pursuant to section 5.

"MAXIMUM HOURS

"SEC. 7. (a) Except as otherwise provided in this section, no employer shall employ any of his employees who is engaged in commerce or in the production of goods for commerce, and no employer who is engaged in commerce or in the production of goods for commerce shall employ any of his employees employed in or about or in connection with any enterprise where he is so engaged, 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.

"(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee receives compensation for employment in excess of ten hours in any workday, or for employment in excess of fifty 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, and 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 guarantee which are also in excess of forty hours in the workweek 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) for a period or periods of not more than fourteen workweeks in the aggregate in the calendar year (a) in any industry found by the Secretary to be of a seasonal nature, or (b) in any other industry engaged in the handling or packing or storing or preparing or in the first processing or canning of agricultural or horticultural commodities in their raw or natural state or of fish or other aquatic form of animal or vegetable life or in the processing of cottonseed or the ginning or compressing of cotton, or in the slaughtering and dressing of poultry or in the making of dairy products, if such industry is found by the Secretary to be characterized by marked annually recurring seasonal peaks of operation: *Provided*, That when the Secretary finds that in an industry engaged in the handling or packing or storing or preparing, or in the first processing or canning of fresh fruits and vegetables an additional number of weeks of exemption are required to prevent the spoilage of such perishable fresh fruits and vegetables, he is authorized to extend the exemption for additional weeks not to exceed a total of six.

"(c) Except as provided in subsection (d) of this section, sums paid by an employer to an employee regardless of whether the employee has worked in excess of the maximum number of hours specified in this section, or in amounts not based on the number of hours actually worked by him in excess of such maximum in each workweek, shall not be deemed payments of premium compensation required by this section for overtime employment; and notwithstanding any other provision of this section, any salaried employee who is employed in excess of forty hours in any workweek shall be paid for each such hour in excess of forty, in addition to his salary for forty hours of work, at a rate not less than one and one-half times the hourly rate obtained by dividing his weekly salary by not more than forty: *Provided*, That as to any employee employed in pursuance of a collective-bargaining agreement, made by representatives of employees certified as bona fide by the National Labor Relations Board, which (1) provides a contract regular rate of pay of not less than $1.50 an hour for such employee and compensation at not less than one and one-half times such rate for all hours worked in excess of forty, (2) provides a weekly guaranty of employment or pay for more than forty hours and not more than sixty hours, and (3) meets the requirements of regulations promulgated by the Secretary of Labor prescribing such conditions as he shall determine to be necessary or appropriate to carry out the purposes of this Act, this subsection shall not be applicable.

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

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

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

"(3) sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, promise, arrangement, or a custom or practice causing the employee to expect

such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust, meeting the requirements of the Secretary of Labor 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) talent fees (as such term is defined and delimited by regulations of the Secretary) paid to performers, including announcers, on radio and television programs;

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

"(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or forty in a workweek 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;

"(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 forty hours), 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.

"(e) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of forty hours 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 such employment in excess of forty hours—

"(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;

and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (d) 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.

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

"WAGE ORDERS IN PUERTO AND THE VIRGIN ISLANDS

"SEC. 8. (a) The policy of this Act with respect to industries 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 a minimum wage of 75 cents an hour in each such industry. The Secretary 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 in any such industry or classifications therein.

"(b) Upon the convening of any such industry committee, the Secretary shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, may hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this Act. The committee

shall recommend to the Secretary the highest minimum wage rates for the industry which it determines 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.

"(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 75 cents an hour) 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 classification, 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 and the Secretary shall consider among other relevant factors the following:

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

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

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

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

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

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

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

"ATTENDANCE OF WITNESSES

"SEC. 9. For the purpose of any hearing or investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U. S. C., 1946 edition, title 15, secs. 49 and 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary 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 places of business, or in the United States Court of Appeals for the District of Columbia circuit, by filing in such court, within sixty 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 served upon the Secretary, and thereupon the Secretary shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript 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 the Secretary 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 the Secretary 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 proceeding before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his 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 his 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 title 28, United States Code, section 1254.

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

"INVESTIGATIONS, INSPECTIONS, AND RECORDS

"SEC. 11. (a) The Secretary or his designated representatives may investigate and gather data regarding the wages, hours, employment of minors, 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. The Secretary shall bring all actions under section 17 to restrain violations of this Act.

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

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

"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 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) No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce and no employer who is engaged in commerce or in the production of goods for commerce shall employ any oppressive child labor in or about or in connection with any enterprise where he is so engaged.

"EXEMPTIONS

"SEC. 13. (a) The provisions of sections 6, 7, and 12 shall not apply with respect to (1) any employee engaged in the delivery of newspapers to the consumer; or (2) any employee of a retail or service establishment whose employer had a total annual volume of sales or servicing of not more than $500,000 during the preceding calendar year. An establishment shall not be deemed a retail or service establishment within the meaning of this subsection if more than 25 per centum of its annual dollar volume during the preceding calendar year was derived from activities other than retail selling or servicing. As used in this subsection, 'retail selling or servicing' means selling or servicing to private individuals for personal or family consumption, or selling or servicing (but not for resale) where (1) the goods sold or serviced do not differ materially either in type or quantity from goods normally sold or serviced for such personal or family consumption, or where (2) the customer is a farmer and the goods sold or serviced are of types and in quantities used by the ordinary farmer in his farming operations.

"(b) 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, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Secretary); or (2) 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, including the going to and returning from work and including employment in the loading and unloading, when performed by any such employee, and in the icing, cleaning, salting, or other preparation of such products in their raw state for shipment from the place of unloading to market or to processors; or (3) any employee employed in agriculture; or (4) any employee to the extent that such employee is exempted by regulations or orders of the Secretary issued under section 14; or (5) any employee employed in connection with the publication of any weekly or semiweekly newspaper with a circulation of less than five thousand the major part of which circulation is within the county where printed and published; or (6) any switchboard operator employed in a public telephone exchange which has less than five hundred stations; or (7) any employee of an employer engaged in the business of operating taxicabs; or (8) any employee or proprietor in a retail or service establishment as defined in subsection (a) of this section, 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.

"(c) The provisions of section 7 shall not apply with respect to (1) any employee employed during the greater part of any workweek as a driver or helper riding a motor vehicle in the performance of over-the-road transport operations (as defined by the Secretary of Labor); or (2) any employee of an employer which is an express company, sleeping car company, or carrier by railroad, subject to part I of the Interstate Commerce Act; or (3) any employee employed as flight personnel on an aircraft by a carrier by air subject to title II of the Railway Labor Act; or (4) any employee employed as a seaman.

"(d) 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.

"LEARNERS, APPRENTICES, AND HANDICAPPED WORKERS

"SEC. 14. The Secretary, 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, and of messengers employed exclusively 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, 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 Secretary, at such wages lower than the minimum wage applicable under section 6 and for such period as shall be fixed in such certificates.

"PROHIBITED ACTS

"SEC. 15. (a) It shall be unlawful for any person—

"(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or section 7, or in violation of any regulation or order of the Secretary issued under section 14; except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them after such violation occurred shall not be deemed unlawful if such purchaser proves that he was without knowledge of such violation, and acted 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 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;

"(2) to violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order of the Secretary issued under section 4 (c) or 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 to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

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

"PENALTIES

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

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

"(c) 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 6 or section 7 of this Act, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. At the request or with the consent

of any employee claiming unpaid minimum wages or unpaid overtime compensation under section 6 or section 7 of this Act, the Secretary may bring an action in any court of competent jurisdiction to recover the amount of any such claim. The Secretary may join in one cause of action the claims of any employees similarly situated who consent thereto. The consent of any employee to the bringing of any such action by the Secretary, unless such action is dismissed without prejudice on motion of the Secretary, shall constitute a waiver by such employee of any right 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. Any sums thus recovered by the Secretary on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts: *Provided*, That nothing in this subsection shall affect or limit in any way the full equitable jurisdiction of the courts under section 17 of this Act.

"INJUNCTION PROCEEDINGS

"SEC. 17. The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, to restrain violations of section 15.

"RELATION TO OTHER LAWS

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

"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."

AMENDMENT OF THE PORTAL TO PORTAL ACT OF 1947

SEC. 3. (a) Section 6 (a) and section 6 (b) of the Portal to Portal Act of 1947 (Public, Numbered 49, Eightieth Congress, first session) are hereby amended by substituting the word "four" for the word "two" wherever appearing therein.

(b) The functions and duties of the Administrator of the Wage and Hour Division of the Department of Labor under section 10 of the Portal to Portal Act of 1947 (Public, Numbered 49, Eightieth Congress, first session) are hereby transferred to the Secretary of Labor and shall be administered under his direction and control.

EFFECTIVE DATE OF CERTAIN CHANGES

SEC. 4. (a) This Act shall take effect upon the expiration of one hundred and twenty days from the date of its enactment, except that the functions of the Secretary of Labor provided for in the Fair Labor Standards Act of 1949 may be exercised forthwith, and the provisions of section 7 of said Act (relating to overtime compensation) shall be in full force and effect from and after the date of enactment of this Act.

(b) 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 of Labor, in effect under the provisions of the Fair Labor Standards Act of 1938 on the date of enactment of this Act, shall remain in effect as an order, regulation, interpretation, or agreement of the Secretary of Labor pursuant to this Act, except to the extent that any such order, regu-

lation, 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 Secretary of Labor in accordance with the provisions of this Act.

(c) 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 four years from such effective date, no action shall be instituted under section 16 (b) of the Fair Labor Standards Act of 1938 with respect to any liability accruing thereunder.

## General Statement

The purpose of the bill (H. R. 3190) is to clarify, strengthen, and extend the scope and application of the Fair Labor Standards Act of 1938 and thus more fully attain the declared policy of the act. This policy, as set forth in the act itself, is "to correct and, as rapidly as practicable, to eliminate labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers." The basic reason for such a revision, repeatedly requested by the President, was most recently summed up in the economic report of the President, transmitted to the Congress January 1949:

> While we are fighting further inflation, we should recognize that severe hardship has already been imposed on those whose incomes have lagged far behind the increase in the cost of living. Whatever is feasible to alleviate this hardship should be accomplished without delay. I recommend specifically:
>
> * * * * * * *
>
> That the coverage of the Fair Labor Standards Act be broadened and the minimum wage increased from the present 40 cents an hour—a figure determined in 1938—to at least 75 cents an hour. It should be permissible to provide higher minima by tripartite action of employers, unions, and the Government on an industry basis * * *.
>
> * * * * * * *

In directing ourselves to this purpose the committee has borne in mind several other basic considerations. The act in 1938 was an advance in a new field of Federal legislation, untried in practical application on a broad national scale. As stated in the report of the Senate Committee on Education and Labor on S. 2475 (S. Rept. No. 884, 75th Cong., 1st sess.):

> The committee believes that a start should be made at the present session of the Congress to protect this Nation from the evils and dangers resulting from wages too low to buy the bare necessities of life and from long hours of work injurious to health. This law proposes to accomplish this purpose by closing the channels of interstate commerce to goods produced under conditions which do not meet the rudimentary standards of a civilized democracy.

The original legislation was, therefore, confined to modest goals. Even then the Congress recognized that the statutory minimum wage of 40 cents an hour "does not give a wage sufficient to maintain what we would like to regard as the minimum American standard of living." The coverage of the act was a limited exercise by the Congress of its commerce powers in regulating wages and hours in interstate industries. Some uncertainties as to the economic effects of the act in a country as geographically and industrially diverse as the United States encouraged the acceptance of many overlapping and confusing exemptions. In addition some terms used in the act were not defined, undoubtedly because the Congress was further exploring a new field under a new law.

Since 1938 there have been virtually no changes in the Fair Labor Standards Act, except for a provision for special wages orders to apply in Puerto Rico and the Virgin Islands, and the Portal Act of 1947 to clarify the problem of what constitutes working time. In this period, however, there have been many developments, both in the administration of the act and in the economic conditions of the country which now warrant a reappraisal and revision of the act with a view toward increasing its effectiveness as an instrument of its declared policy.

The committee finds that as a result of the economic development of the country during the past 10 years, the 40-cents rate, inadequate when enacted, has long been outmoded as a measure of the amount required to yield a minimum standard of living for American workers. The rise in national income, farm income, productivity, and corporate profits clearly enables a very substantial permanent increase in the minimum wage. In the words of the President in his state of the Union message, January 5, 1949, "The health of our economy and its maintenance at high levels further require that the minimum wage fixed by law should be raised to at least 75 cents an hour."

Second, misunderstanding and uncertainty on the part of both employers and employees as to their status under the act has resulted from the act's present coverage—based as it is on the activities of individual employees engaged in commerce or the production of goods for commerce. This limited application of the act has created intraplant inequities and has permitted some employers to gain an unfair competitive advantage. Generally speaking, employers regard their operations as a whole, not in terms of particular activities of individual employees. At the same time employees have been justifiably confused by the knowledge that fellow workers in the same plant have Federal wage and hour protection whereas they themselves do not. The committee therefore believes not only that employees who are themselves engaged in commerce or in the production of goods for commerce should be protected by wage-hour legislation, but that similar benefits should be accorded all employees in an enterprise in which the employer is engaged in commerce or in the production of goods for commerce.

Third, experience in the administration of the act for the past decade has shown that complex, overlapping, and in some cases, completely unworkable exemptions from the act's application have equally contributed to injustice, uncertainty, and undue competitive advantages particularly in the fish and food processing and transportation industries.

For example, at the present time, there are no less than five different types of exemptions for industries processing agricultural commodities, with the result that for individual industries, one, two, or even three different exemptions may be available, or an exemption is available to one but not to another worker in the same establishment, or an exemption is available to one employer but not to a competitor located across the street. The committee feels that one of the most important features of the bill is the simplification and clarification of the previously complicated and confusing system of exemptions provided in the 1938 act. Moreover, it has been our intention to allow exemptions so far as possible only where the necessity for them has been clearly demonstrated in the light of 10 years experience of administration of the act.

Fourth, as a consequence of the failure of the present act to define the term "regular rate," upon which the payment of overtime pay is based, varying judicial interpretations have indicated certain limitations in the law. In some instances, wage plans which do not appear to be in accordance with the general purposes of the act have received judicial sanction. In others, the law appears unnecessarily to impose restrictions upon bona fide methods of payment which are consistent with the objectives of the act. Clarification must be sought by denoting the types of payment to be excluded in determining the "regular rate," and by indicating the types of premium payments which are creditable against overtime pay required by the act.

Fifth, the child-labor provisions of the present act have been shown to be patently inadequate to effectuate fully the policy of restricting the employment of children. It is our purpose to remedy shortcomings and loopholes in the present child-labor provisions and to conform these provisions with the recommended coverage under the wage and hour provisions.

Sixth, experience has shown certain weaknesses in present provisions for administration and enforcement of the act. For example, under the act there is divided responsibility for carrying out its provisions. Responsibility for carrying out most of its provisions rests in the Administrator of the Wage and Hour Division whereas the administration of the child-labor provisions as well as similar labor laws rests in the Secretary of Labor. We believe that the Secretary of Labor, as an officer of Cabinet rank, represents the most appropriate authority through whom may be coordinated the labor policies of the Government, both on a departmental basis and as to the executive branch as a whole. Centralized administration of this kind would seem to be dictated by sound concepts of efficient government, as pointed out by the Hoover Commission. Another drawback in the act is its failure to provide the administering officers with authority to supervise payment of back wages found owing as a result of violations. A significant tendency for wages to remain unpaid in these instances appears to the committee to impair the fundamental objective of the act to secure for workers the wages which they are required to be paid. Furthermore, the limited period of 2 years within which action must be taken at the present time to collect such wages has proved a serious obstacle to attaining this objective. Finally, the lack of authority to issue regulations, to provide certainty, and to make practical adjustments in the law necessary to carry out the intentions of the Congress has resulted in unnecessary problems as to application in some cases. All of these difficulites the committee proposes to correct by appropriate recommendations contained in the bill

## Major Provisions

The committee has incorporated in the bill the following major changes in the Fair Labor Standards Act of 1938:

1. The minimum wage is increased to 75 cents an hour. Such a rate would be inapplicable to an industry in Puerto Rico or the Virgin Islands when the island industry is subject to a wage order establishing a lower rate which must not, however, give an undue competititve advantage to the industries on the islands, and must be consistent with the policy of attaining a minimum of 75 cents an hour as rapidly as economically feasible.

2. The wage and hour coverage of the act is extended to employees employed in or about or in connection with an enterprise where the employer is "engaged in commerce or in the production of goods for commerce."

3. The child labor provisions of the act are extended so that, in addition to the present coverage, oppressive child labor is directly prohibited "in commerce or in the production of goods for commerce" and "in or about or in connection with any enterprise where the employer is engaged in commerce or in the production of goods for commerce," thus making the child labor coverage consistent with the wage and hour coverage.

4. The present exemptions of the act are changed in the following respects:

(A) both the wage and hour provisions are extended to—

(1) retail and service establishments having a total annual volume of sales in excess of $500,000;

(2) the processing of agricultural, horticultural, and fishery products, by eliminating the unworkable "area of production" exemption (however, such industries, if seasonal, are granted a partial exemption from the overtime provisions for 14 weeks during peak periods, and in the case of processing fresh fruits and vegetables, are granted up to an additional 6 weeks); and

(3) street railways and other local transit systems;

(B) the minimum wage provisions are extended to seamen;

(C) the overtime provisions are extended to—

(1) motor-carrier employees who are not drivers or drivers' helpers in over-the-road transport operations;

(2) air-carrier employees who are not flight personnel;

(3) pipe line carrier employees;

(D) employees in the taxicab business and newsboys will be exempted from the wage and hour provisions;

(E) retail and service establishments with an annual sales volume of $500,000 or less, and the delivery of newspapers are exempted from the child-labor provisions.

5. The "regular rate" of pay is defined for purposes of clarifying overtime compensation required to be paid under section 7.

6. Administration of the act is vested in the Secretary of Labor, who is authorized to make regulations, and to supervise collection of back wages owed to employees under the act and a 4-year statute of limitations on wage suits is substituted for the present 2-year statute.

## Comments on Major Provisions

### THE MINIMUM WAGE

A prime objective of the bill is to raise the minimum wage to 75 cents an hour. To say that such a proposal is overdue is an understatement. Six times in 3 years the President has specifically asked the Congress for action on this subject. In his message on the state of the Union on January 21, 1946, President Truman, in recommending the adoption of such a statutory minimum, stated:

> Lifting the basic minimum wage is necessary, it is justified as a matter of simple equity to workers, and it will prove not only feasible but also directly beneficial to the Nation's employers.

In his message to the House of Representatives of June 11, 1946, vetoing the Case labor relations bill, the President called again for "a fair minimum wage" as an important aspect of efforts to reduce the number and seriousness of work stoppages and strikes.

He repeated his request in his state of the Union message of January 6, 1947. On January 7, 1948, he called for a minimum wage of at least 75 cents an hour. He emphasized this need in his message of July 27, 1948, and the urgency of the matter prompted him once more to ask the present Congress in his state of the Union message of January 5, 1949, to enact the necessary legislation. This final recommendation was outlined in greater detail in the economic report of the President submitted to the Congress January 1949.

It is recognized that the minimum wage of 75 cents an hour is not adequate fully to carry out the declared purpose of the act. It was clearly shown at the hearings that the 75-cent wage figure is at least as inadequate in terms of today's economy as the 40-cent rate was in 1938. An adequate minimum standard of living for a worker and his family would require in excess of $3,300 in most cities in the country, whereas a 75-cent minimum wage will yield only about $1,500 to a worker employed steadily for 40 hours a week throughout the year. A 75-cent minimum does not even yield enough to purchase under present-day conditions the items included in the WPA emergency budget, which would cost about 90 cents an hour today.

We are recommending the 75-cent minimum wage because it will achieve two basic purposes. First, it takes into account and gives desperately needed help to workers in the lowest paying segments of our industries and in the lowest-paid occupations, including those who would be brought under the minimum-wage provisions for the first time by this bill. Second, it would more fully accomplish one important purpose of the present act which is to prevent disastrous wage cutting and thus to bolster purchasing power against any future recession.

A 75-cent minimum wage hardly needs justification under present economic conditions. Since 1938 our national income has more than trebled. Our per capita income is over two and one half times as great now as then. The economy as a whole could therefore probably support a minimum wage well in excess of 75 cents per hour. A 75-cent minimum wage means a direct increase of less than 1 percent in the total pay roll for employees now subject to the act. While the effect of this modest increase on the economy would be negligible, nevertheless, even this modest minimum wage will result in an improvement in the level of living of about 1½ million workers presently subject to the act and of the roughly 900,000 additional workers who will be brought under the act by other provisions of the bill. The vast majority of these workers are now earning more than 60 cents an hour and therefore the benefits they will receive will amount to about 10 or 15 cents an hour in most instances.

In the light of the record-breaking levels of production, including all-time high profits in the very industries with the lowest wages, the Congress should not be misled by alarming statements that a 75-cent minimum will result in throwing vast numbers of employees out of work. These statements come from the same organizations and individuals who opposed the original passage of the act and who then as now urged that the proposed minimum wage would throw

many people out of work. We have carefully examined the evidence on this point and are satisfied that this did not occur and that no substantial curtailment of employment will occur under the 75-cent minimum. In this connection it should be pointed out that 75 cents will have less impact on the economy today than did the rates provided in the original act. Moreover, the act will continue to authorize lower rates for learners, apprentices, handicapped workers, and messengers.

Although we are of the opinion that our present-day economy could support a minimum wage well in excess of 75 cents an hour, the committee has confined its recommendations to this figure with a view to removing every possible objection to the immediate establishment of a 75-cent minimum wage.

We have included in the bill a provision authorizing the use of the industry committee machinery to bring the rates in Puerto Rico and the Virgin Islands as rapidly as is economically feasible up to the 75-cent minimum wage objective. We are satisfied that these island possessions continue to require the special treatment provided by the Congress in 1940. We are confident that under the provisions of this bill the present minimum wage rates in these islands will be reconsidered as rapidly as possible in order to assure that the highest minimum rates practicable will be established and that industries in these islands will not gain a competitive advantage over industries on the mainland.

## COVERAGE

### (*A*) *Minimum wage and overtime*

The wage-and-hour provisions of the present act are confined to employees engaged in commerce or in the production of goods for commerce. We propose to add to this coverage by protecting all employees who are employed by the employer in or about or in connection with any enterprise where he is engaged in covered activities. In this regard it must be borne in mind, of course, that this coverage is reduced by the various exemptions in the act as they would be changed by the bill. For example, agriculture and retail or service establishments having an annual sales or service volume of $500,000 or less would both be exempt from the wage-and-hour provisions of the bill.

The committee has considered a great deal of testimony on the question of coverage and has concluded that as the act now stands it not only makes impossible the full attainment of its stated purpose to eliminate substandard labor conditions which burden the channels of interstate commerce but results in inequities among employers and employees alike by failure to prevent unfair wage competition among enterprises in which the employer is engaged in interstate commerce or in the production of goods for interstate commerce. Inasmuch as the application of the act is now dependent on the individual activities of employees, employers are frequently confronted with a choice of one of two evils: They may choose to risk a decision that particular employees in their enterprises are not engaged in commerce or in the production of goods for commerce only to be confronted later with liabilities because they failed to appraise correctly the meaning of those terms with respect to employees engaged in particular activities; or they may choose to consider all their employees to be subject to the

wage and hour provisions of the act and subject themselves to competitive pressures from employers who pay the minimum wage only to those employees who are clearly subject to the act. As long as this practice is permitted under the act, the fair-minded employer who compensates all his employees in accordance with the national policy of eliminating substandard working conditions must, of necessity, be subjected to unfair competition from employers who adhere to such practices.

The unfairness of the present provisions of the act delineating coverage in terms of activities of individual employees is further demonstrated by considering the unequal treatment of employees working for the same employer. Employees entitled to the protection of the act may be found working side by side with other employees who are not covered by the act. In such cases, understandable dissatisfaction and labor disputes can develop.

The committee's prime concern has been to simplify, clarify, and equalize the coverage of the act with a view to furthering its basic purposes. The United States Supreme Court has already delineated with clearness the meaning of such terms as "commerce" and "production of goods for commerce" (*United States* v. *Darby, supra; Kirschbaum* v. *Walling,* 316 U. S. 517; *Martino* v. *Michigan Window Cleaning Co.,* 327 U. S. 178; *Mabee* v. *White Plains Publishing Co.,* 327 U. S. 178; and others). In the Kirschbaum case, supra, the United States Supreme Court has made the meaning of the term "employer engaged in commerce" clear by stating that "to the extent that his employees are 'engaged in commerce or in the production of goods for commerce,' the employer is himself so engaged." In this regard it should be noted that the recommended coverage would in no event extend to any employer who does not have employees engaged in commerce or in the production of goods for commerce within the meaning of the 1938 act.

(*B*) *Child labor*

At the present time, the child-labor provisions of the act are in some respects broader than the wage-and-hour provisions; in other respects they are narrower. This results from the fact that these provisions apply on an establishment basis to employers engaged in the production of goods for commerce but do not apply to young workers in establishments engaged in commerce which do not produce goods. There is just as much need for the elimination of employment of young workers by employers engaged in commerce as there is for the similar prohibition applicable to employers engaged in the productions of goods for commerce. The committee recommends, therefore, that the child-labor provisions be made consistent with the wage-and-hour provisions of the act.

*Maximum hours and overtime pay.*—The present act establishes 40 hours as the standard nonovertime workweek. For employment in excess of 40 hours' overtime pay is required at a rate not less than one and one-half times the employee's "regular rate."

The bill retains this provision of the law, which has been tested under widely varying economic conditions and has, in the opinion of the committee, proved generally beneficial to labor, management, and the economy of the Nation as a whole. The provision contemplates that there shall be added to an employee's regular pay for 40 hours

of work, for each hour that he works in excess of 40, a sum of 50 percent greater than he earns for a nonovertime hour of work. In addition to protecting the competitive position of fair employers who desire to maintain similar standards established voluntarily or through collective bargaining, this provision tends to accomplish three major objectives: (1) To shorten the workweek in the interest of health, efficiency, and general well-being of workers; (2) to maintain maximum employment by spreading the work among more workers; and (3) to compensate employees for the burden of long workweeks.

The committee is convinced that the attainment of these objectives in the case of salaried workers has been frustrated in many instances by the use of two devices which have been held by the courts not to violate the present act, although their effect is to deny to an employee the full 50 percent premium for overtime work which the act contemplates. The bill would outlaw these devices.

The first of these devices, known as the Belo plan (see *Walling* v. *A. H. Belo Corp.*, 316 U. S. 624, and *Walling* v. *Haliburton Oil Well Cementing Co.*, 331 U. S. 17), consists of a guaranteed salary contract under which employees may be required to work many hours in excess of 40 (as high as 84 in the Halliburton case) for exactly the same compensation they would have received working 40 hours or less. Under this plan, the contract specifies a so-called regular rate which is set low enough so that the guaranteed salary will in most weeks exceed the sum which the employee would receive if he was paid at the specified rate with time and one-half such rate for overtime in excess of 40 hours. For example, an employee receiving a guaranteed salary of $50 a week which would be paid him if he worked 40 hours might be assigned a rate of 75 cents (equal to only $30 for a 40-hour week), so that he would have to work more than 57 hours before he would be entitled to receive anything extra, above his $50 salary, for overtime work. The fact that the employee is paid time and one-half this hourly rate under such a contract when he works in excess of the number of hours covered by the guaranty does not, in the opinion of the committee, justify failure to pay full time and one-half for each hour after 40, based on the pay to which the employee is entitled when he works only 40 hours.

The second of these devices has been variously described as "Chinese overtime," the "galloping rate," or the "fluctuating workweek." It is used when employees are paid a salary as straight-time compensation for a week's work, which remains the same in amount whether the employee works 40 hours or a greater number in the week. The regular rate on which overtime pay is computed is calculated each week by dividing the fixed salary by the actual number of hours worked in that week, with the result that the employee's regular rate decreases as his hours of work increase (see *Overnight Motor Co.* v. *Missel*, 316 U. S. 572). Thus an employee with a salary of $50 a week, whose regular rate would be $1.25 an hour if he worked only 40 hours, would have a regular rate of only 62½ cents if he worked 80 hours. The curious result of this method of calculation is that this employee, who would earn $1.25 an hour at straight time if he worked only 40 hours, can average only 78 cents an hour for the entire workweek, including overtime pay, if he works twice as long. It is apparent that the objectives of the act's overtime provisions are defeated by such a scheme.

The committee believes that neither of these devices should be permitted in the future. The provisions of section 7 (c) of the act as proposed in section 2 of the bill are intended to prevent their further use. A proviso is added, however, to permit the Secretary of Labor to authorize, under appropriate regulations, bona fide agreements for a guaranteed weekly wage in limited circumstances where the committee believes that collective bargaining and the payment of a genuine and sufficiently high rate of pay (at least $1.50 an hour) will obviate evasion and circumvention of the overtime provisions of the act.

Although loopholes such as those just mentioned should be closed, the committee believes that it is both necessary and desirable to give greater leeway for the adoption and maintenance of contract overtime pay provisions which are consistent with the general purposes of the maximum hours provisions of this act. The committee recognizes that in many operations in industry, employers and employees prefer to calculate overtime pay by increasing the applicable hourly or piece rate for a given kind of work by 50 percent during overtime hours, rather than by paying time and one-half based on average hourly earnings for the workweek. It is believed proper to permit this practice, under appropriate safeguards, and this has been done in subsection (e) of section 7 of the amended act as proposed in the bill. The committee also believes that the Secretary of Labor should have authority, as provided in the bill, to issue regulations pursuant to which bona fide profit-sharing payments could be made to employees under conditions consistent with the objectives of this act, without the necessity of recalculating overtime pay. The committee has also given careful consideration to the problems of compliance with the present act which are faced by all industries in which there have been established premium pay practices of the kinds considered by the Supreme Court in *Bay Ridge Operating Co.* v. *Aaron* and *Huron Stevedoring Corp.* v. *Blue* (334 U. S. 446). It is the considered judgment of the committee that there is need for extension to industry generally of the provisions contained in H. R. 858, recently passed by the House of Representatives, which would afford relief to the longshore, stevedoring, building and construction industries from the so-called overtime-on-overtime problem. The bill makes the provisions of H. R. 858 effective in all industries by incorporating them as an integral part of the Fair Labor Standards Act.

The present act does not define the term "regular rate," or grant to the Administrator authority to define the term by legally binding regulations. This has caused no problem in the many situations where the regular rate at which an employee is employed is clear, but the lack of express statutory guides has caused uncertainty in the past in those cases where employees are paid several different forms of compensation. In such instances it is necessary to determine what types of remuneration are to be included in or excluded from straight-time wages and decide on the method of computing the rate.

As the result of litigation over the period of 10 years since the act went into effect, certain judicial guides to the ascertainment of the regular rate of an employee in such situations have been established. While in general the guides have been helpful and have served to effectuate the policies of the act, in some instances they have revealed limitations in the present law which interpose difficulties where the parties are endeavoring by contract to establish enlightened premium

pay practices on the basis of standards equal to or higher than those set by the act.

The committee believes that there is need for a statutory clarification of the term "regular rate" in order to remove, so far as possible, any uncertainty as to meaning, and to provide explicit guidance for affected employers and employees and for the officials charged with the duty of administering the law. With this end in view, the bill defines and delimits in some detail the payments to employees which the committee believes should be excluded in computing the regular rate of pay, and makes it clear that all other remuneration for employment should be included in calculating this rate. The bill further provides for the first time a statutory guide as to what payment made pursuant to contract or practice may be credited toward the premium compensation for overtime which is required by the statute.

The committee believes that the revised overtime provisions contained in the bill will tend to prevent misunderstanding of the law, will facilitate administration, will correct deficiencies in the present law which have proved disturbing to sound labor-management relations and efficient enforcement, and will give express statutory approval to those existing interpretations and decisions which have proved workable and desirable in actual practice.

### CHILD LABOR

As has been pointed out earlier, the bill brings the coverage of the child labor provisions generally into line with that of the wage and hours provisions of the act. The present child labor standards apply only to employers producing goods for shipment in commerce and not to employers engaged in commerce but not in producing goods. This loophole in the present law, which permits the employment of children in such direct interstate activities as transportation and communication, would be closed by the bill.

The new provision (sec. 12 (b)) added to the act by the bill further strengthens the child labor provisions by directly prohibiting the employment of oppressive child labor. Section 12 (a) of the present act, which has been retained in the bill, prohibits the shipment or delivery for shipment in commerce of goods produced in an establishment which are removed from it within 30 days after the employment there of oppressive child labor. The bill's direct prohibition of employment of oppressive child labor would reach employers who can avoid the prohibition of the present law by holding goods in their establishment for 30 days after children under the minimum age have been employed.

Under the present act, children employed by their parents in occupations other than manufacturing and mining are exempted from the child-labor provisions unless they are 16 or 17 years of age and are employed in a hazardous occupation for which an 18-year minimum age is provided. This presents the anomaly of permitting children under 16 to work for their parents in hazardous work while prohibiting children from doing the same work for their parents when they are between 16 and 18 years of age. The bill corrects this anomaly by excluding from the parental exemption all employment of children under 16 years of age in such hazardous work.

The present exemption from the child labor provisions applicable to children acting in motion picture and theatrical productions is expanded in the bill to include children performing in radio and television productions. Newspaper carrier boys delivering newspapers to consumers are specifically exempted by the bill, as are minors employed in retail or service establishments with an annual sales volume of $500,000 or less. These exemptions are believed to be proper as a means of avoiding difficulties in administration in these fields which appear to the committee to be disproportionately great in comparison with possible benefits which might result from applying the child-labor provisions to such work.

The present act exempts from the child labor provisions children employed in agriculture while not legally required to attend school. The administration of this provision has proved exceedingly difficult because of the necessity of determining in each case the legal status, under the particular State Law, of a child's absence from school. The great variance from State to State in school attendance requirements has nullified uniformity of application of this exemption, and has resulted in inadequate protection of the educational opportunities of children employed in agriculture in many States. The bill proposes to correct this situation by limiting the exemption to employment in agriculture outside of school hours for the school district where the child is living while so employed. The school hours for any district can readily be ascertained as a matter of fact without the necessity of exploring the ramifications of State legal requirements regarding attendance in the particular State. This change would also tend to equalize the opportunity of children in various States to attend the local schools when they are in session. As at present, however, the child labor provisions of the bill would not apply to children employed by their parents on their parents' farms.

Section 3(1) of the act which authorizes the Secretary to permit employment of children 14 to 16 years of age during periods which will not interfere with their schooling and under conditions which will not interfere with their health and well-being is retained in the bill. Under this provision, the Secretary would be empowered to permit employment in agriculture during school hours of children 14 to 16 years of age who had completed their course of study.

## Exemptions

The committee has thoroughly reviewed and revised the present complex system of exemptions under the act with a view to their simplification, the elimination of those which experience has shown to be unjustified or unworkable, and the limiting of others where, in the opinion of the committee, such limitation is proper in the light of the objectives of the act and is feasible from a practical standpoint in the light of conditions in the affected industries. An explanation of these changes follows.

*(a) Retail and service establishments*

The Fair Labor Standards Act at present exempts from both the minimum wage and the overtime requirements all employees engaged in retail and service establishments the greater part of whose selling or servicing is in intrastate commerce. Sponsors of the legislation

in the Seventy-fifth Congress supported this exemption as one which would exclude from the law the small corner grocery, the small drug store, pants presser, or barber shop and the like. However, the broad language of the present exemption has enabled large mercantile industrial establishments and national systems of chain stores to seek and find a large measure of immunity from the minimum fair labor standards of the wage-and-hour law. Their claim to be regarded as exempt retail establishments rests solely on the fact that they distribute and sell goods at retail though they commonly buy as wholesalers and often operate from a central office over a broad geographic region. On the other hand, some small establishments of the type sought to be protected fail to qualify for exemption because their proximity to a State border results in their making more than 50 percent of their gross sales in interstate commerce. Furthermore, the failure of the act to define retail selling and servicing has caused confusion among employers and resulted in considerable litigation.

As pointed out above, the bill would continue to exempt the typical local retail or service establishment from the minimum-wage and overtime-pay provisions. It would add to this an exemption from the child-labor provisions. In addition, the exemption for these small local establishments is broadened so that a preponderance of interstate selling or servicing due to fortuitous proximity to a State line will no longer defeat the exemption. These establishments would be relieved of the present burden of computing and keeping records of the percentage of their interstate sales and services.

The bill would deny the exemption, however, to retail or service establishments operated by an employer whose total annual volume of sales or servicing (in all such establishments operated by him as a single enterprise) in the preceding calendar year was more than $500,000, thus withdrawing exemption from large department stores, and hotels, large automobile sales and service enterprises, and the like, and from all outlets of large chain-store enterprises, even though the gross receipts of particular individual outlets of the chain might be less than $500,000. These large enterprises are totally unlike the small corner grocery store, restaurant, or barber shop which the bill still exempts. The committee believes that they can and should comply with the modest minimum standards set by this bill. The manufacturing and wholesaling employees of these large enterprises are covered by the present act; the need for extending the act's protection to their retail employees, whose wages are often lower, is amply clear. Where such enterprises are engaged in interstate commerce or in the production of goods for interstate commerce, all their employees will be brought under the act's protection by this bill.

The bill adopts the long-established administrative guide under which establishments are not exempt if they derive more than 25 percent of their dollar volume from activities other than retail selling or servicing. The committee believes that such establishments are so substantially engaged in nonexempt activities that they cannot properly be considered exempt as retail or service establishments. This guide has been recognized by the courts as a proper one and retail and service establishments are familiar with its application. Retail selling or servicing, moreover, is not limited by the bill to its technical meaning of selling or servicing to private individuals for personal or family consumption. It extends also to selling or servicing in small

quantities to business users of goods of the type normally sold or serviced for individual private consumers and to typical sales or servicing of farm goods or equipment to farmers. Thus, the actual tolerance for activities other than strictly retail selling and servicing in an exempt establishment is considerably greater than 25 percent. In the opinion of the committee, the tolerance is ample to assure the exemption of bona fide local retail or service establishments engaged in meeting the personal or family needs of neighborhood consumers, such as the ordinary local store, restaurant, home laundry, tavern, barber or beauty shop, shoe-repair shop, and the like.

(*b*) *Farm labor and fishermen*

The bill retains without change the complete minimum wage and overtime exemption for employees employed in agriculture. The proposal in H. R. 2033 and in H. R. 3190, as introduced, to extend minimum wage protection to workers on large industrialized farms received the careful consideration of the committee. Whatever the merits of these proposals, the committee believes that the information available to it at present is inadequate on which to base an informed judgment as to what the full scope of agricultural coverage under these proposals would be, as to whether the proposed language would be adequate to assure a workable law, and as to what the effect of such a provision would be on the agricultural economy of the Nation.

The bill also retains the present complete exemption from the minimum wage and overtime provisions for employees employed in fishing or fish farming, including the going to and returning from work and loading and unloading operations performed by such employees (although eliminating the broad exemption for employees employed in the storing, processing, and distribution of such products). The committee's amendment to the bill extends this exemption to employees employed at the place of unloading in those shore operations which are necessarily performed on the fishermen's catch in its raw state in order to preserve it from spoilage during shipment from the place of unloading to market or to processors. It was brought to the attention of the committee that in fishing villages it is customary, on unloading of the catch, to take whatever steps are necessary to preserve the catch in good condition until it reaches market, including the performance of such operations as icing, salting, heading of shrimp, and the like. These operations are closely integrated with the fishing operations themselves and, in the opinion of the committee, may properly be included within the same exemption. They are to be distinguished, in the view of the committee, from operations performed on fishery products in canning, freezing, or other processing plants (whether or not located at the place of unloading), which are industrial operations that should be subject to the minimum wage and should receive, with respect to overtime, treatment similar to that accorded the operations of processors of farm products.

(*c*) *Handlers and processors of farm and fishery products*

The exemptions in the present law for the handling, packing, and processing of agricultural and horticultural commodities and fishery products are complex, overlapping, and difficult to apply. They have proved over a period of 10 years to be inequitable, hard to understand, and productive of litigation. Some exemptions are

from both the minimum wage and the overtime provisions, others from the overtime provisions only, and some of the latter provide complete exemptions while others are only partial or limited. Some of the exemptions turn upon the employment of the individual in the "area of production"; others upon the operations of the employer in the "area of production." It has been found impossible to define the "area of production" in a way which would provide a practicable and equitable segregation of exempt from nonexempt operations. Some of the exemptions depend upon what the individual employee does, others upon operations of the industry, others upon the employer's operations in particular establishments. It has proved an impossible task for a small rural handler and processor of farm products, for example, to find any simple guide by which he can determine which of his employees are and which of them are not exempt under these provisions.

The committee believes that these exemptions should be revised and consolidated in a manner which takes due account of the practical necessity for an overtime tolerance in these industries in order to meet seasonal peak needs. Such a revision should at the same time assure the protection of the minimum wage to all such employees who are not engaged in agriculture or in fishing operations and should provide the utmost possible certainty as to the application of the law.

The committee has substituted for the existing complex pattern of exemptions a uniform system of overtime exemptions to serve the needs of those industries in which natural factors create seasonal labor requirements. The committee recognizes that these factors necessitate for temporary periods long hours of work in plants whose manpower and equipment are not adequate to care for peak loads of perishable and seasonal commodities under a 40-hour week. The bill meets the problems of these industries through an expansion of the existing exemption in section 7 (b) (3) of the act which now is available only to industries found to be of a seasonal nature. The existing exemption is confined to industries whose productive operations are limited by natural factors to a period which in general does not exceed 6 months in the year. Under seasonal determinations made by the Administrator, upwards of 40 industries or industry branches are now included within this exemption. Typical examples are tobacco auction warehouses and redrying establishments and warehousing of cotton. The bill does not disturb these determinations. Instead, it leaves the way open for other agricultural or fish-processing industries of a seasonal nature to apply for and receive similar determinations. In addition, the bill provides for the extension of this exemption to other such industries whose productive operations are not restricted to so short a period but which are able to show that their operations on farm or fishery products are characterized by marked annually recurring seasonal peaks of operation. As in the case of industries of a seasonal nature under the present act, certainty is provided by administrative procedure under which the industry may be carefully defined and affirmative determination made that it is entitled to obtain the exemption.

The industries for which this exemption is provided are allowed a total of 14 workweeks in the calendar year, and up to 20 weeks for fresh fruits and vegetables when found needed. During these workweeks they may work their employees up to 10 hours in any day or

50 hours in any workweek without payment of time and one-half for overtime. Each establishment in the industry may select the workweeks during the year to which the exemption is to apply in that establishment, and the employer may do this week by week as needed rather than in advance, if he so chooses. With this flexibility in the overtime requirements, the committee believes that the legitimate needs of these industries for exemption to meet seasonal peak loads are adequately cared for in the bill. The substitution of this provision will, in the committee's opinion, meet an urgent need for clarification, simplification, and uniformity in the law which will benefit employers and employees alike and will facilitate effective administration.

*(d) Transportation employees*

The bill revises and consolidates into a coherent pattern the existing unequal and inconsistent exemptions applicable to employees in the transportation industries. Some of these employees are at present exempt from both the minimum wage and overtime provisions, others from the overtime provisions only. The present law draws no uniform distinction for purposes of the overtime exemption between employees who work under conditions which would make it difficult to apply the principle of the 40-hour week and those employees in the transportation industries whose work hours can readily be accommodated to the overtime requirements of the act.

The general pattern adopted by the committee is to eliminate minimum wage exemptions for all employees in transportation, and to limit exemptions from the overtime provisions to those employees who cannot practicably be brought under the 40-hour week at the present time. This is in line with the national transportation policy expressed in the 1940 amendment to the Interstate Commerce Act—

> to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this [Interstate Commerce] Act * * * without unjust discriminations, undue preferences or advantages or unfair or destructive competitive practices.

The committee has, accordingly, eliminated the minimum-wage exemptions for employees of carriers by air and for seamen employed by water carriers. This brings these systems of transportation under the minimum wage, which is already applicable to employees employed in competing forms of transportation by rail, motor carrier, and pipe line. Under the bill, seamen will remain exempt from the overtime provisions, as will those employees of carriers by air subject to the provisions of title II of the Railway Labor Act who are employed as flight personnel on aircraft. Other employees of water carriers have no specific exemption either in the present act or under the bill. Other employees of air carriers subject to the provisions of title II of the Railway Labor Act who are exempt under the present act from the overtime as well as the minimum-wage provisions will have no such exemption under the bill.

The present act exempts from the overtime provisions motor carrier employees with respect to whom the Interstate Commerce Commission has power under the Motor Carrier Act to establish qualifications and maximum hours of service, without regard to whether this power is actually exercised by the Commission. This exemption has created a no-man's land in which hours are at present not regulated under either act for loaders and mechanics of motor carriers. As it stands now, the

exemption applies to drivers, drivers' helpers, mechanics, and loaders of motor carriers whose activities directly affect safety of operation, even though the Interstate Commerce Commission has found the need to regulate the hours only of drivers and drivers' helpers. The exemption, according to the Supreme Court's decision in *Morris* v. *McComb* (332 U. S. 422), applies to all such employees of a motor carrier which is engaged in interstate commerce, even though the carrier is engaged almost exclusively in activities subject to the Fair Labor Standards Act but not to the Motor Carrier Act. This is true even though the interstate hauling business which brings the concern within the Commission's jurisdiction may consist merely of local cartage to and from local freight terminals amounting to only 3 or 4 percent of its total transportation business.

In order to eliminate this no-man's land in which the hours of loaders and mechanics are regulated under neither act, the bill limits the exemption for motor-carrier employees employed during the greater part of any workweek as drivers and helpers riding a motor vehicle in the performance of the over-the-road transport operations as defined by the Secretary of Labor. It is the intention of the committee under this provision to make a distinction between employees engaged in local pick-up and delivery services within a restricted area, whose hours can be readily accommodated to the standards of the act, and those employees engaged in longer hauls who are the only employees of motor carriers with respect to whom any difficulty can legitimately be said to arise in conforming to such standards. At the same time, the bill would restore the benefits of the act to those employees who act as drivers or helpers for only a small portion of the workweek, thus removing from the act the opportunity now presented to employers to evade the overtime requirements.

The committee is convinced that there is no justification for continuing to base the exemption on any theory of conflict of jurisdiction. There is no necessary conflict between the authority of the Interstate Commerce Commission under the Motor Carrier Act to set absolute maximum hours in the interest of safety on the highways, and a requirement under the Fair Labor Standards Act that if such hours exceed 40, time and one-half shall be paid.

The bill limits the existing exemption from the overtime provisions for employees of employers subject to part I of the Interstate Commerce Act by expressly defining the groups to which the exemption applies and eliminating the exemption of pipe-line employees, who can and should be employed in accordance with the hours provisions of the act. Under the bill, employees of express companies, sleeping-car companies, and railroad carriers engaged in activities by virtue of which their employer is subject to part I of the Interstate Commerce Act, will continue to be exempt from the overtime provisions of the act. The committee's attention has been directed to the fact that nonoperating employees are about to achieve, through collective bargaining, the goal of a 40-hour week in railroad transportation. In the circumstances, the committee feels that it is desirable that the status of these employees under this act should remain unchanged at least until their situation can be more fully analyzed in the light of recent developments. In view of the achievement of a 40-hour week in this industry through collective bargaining, no competitive inequities will

result from the limitations placed by the bill on the overtime exemptions for carriers by air, water, and highway.

The bill eliminates the present exemption from the minimum wage and overtime provisions for employees of street railway and other local transit systems. The committee believes that such employees need the protection which the act provides and that it is both justifiable and practical to apply the requirements of the act to such enterprises. Under the committee bill the great bulk of the employees in the local transit industry will now be afforded the protection of the act.

*(e) Guaranteed annual employment plans*

The partial exemption from the overtime provisions under the present section 7 (b) (2) for employees employed pursuant to collective bargaining agreements under a guaranteed annual employment plan has been amended to permit the greater flexibility needed to encourage such agreements. At present such plans are geared to the rigid figure of 2,080 hours in 52 weeks and few firms have been willing to operate under such plans because of the risk of nullifying the permitted overtime tolerance for all workweeks in the year if additional work is needed at a time when the guaranteed hours have been used up and an employee has to work for a few additional hours.

The amendment would permit an annual employment contract which guarantees as little as 1,840 hours (or 46 weeks of at least 30 hours) of employment in a 52-week period and yet would permit employment up to a maximum of 2,240 hours without destroying the overtime tolerance during the guaranty period. This would be conditioned on a provision in the contract requiring overtime pay at time and one half for hours in excess of 40 in any week following the completion of work in the amount guaranteed or, in any event, for all hours in excess of 2,080 (the equivalent of 52 weeks of 40 hours each). Such a provision will serve to encourage setting the guaranty figure as close as possible to the number of hours expected for full annual employment.

During the life of the guaranty, overtime pay is due for hours in excess of 10 (rather than 12, as now) per day, or 50 (rather than the present 56) per week. It is believed that this will encourage more desirable working hours while retaining sufficient flexibility to allow for practical operation. These revised provisions for daily and weekly overtime also become a part of the 26-week employment plan of section 7 (b) (1) which is otherwise unchanged (except for substitution of 1,040 for 1,000 in the maximum-hours limitation).

*(f) Miscellaneous*

A new section 13 (a) (1) exempts from the minimum wage, overtime and child-labor requirements of the act, newspaper carrier boys delivering newspapers to consumers. New exemptions from the minimum wage and overtime provisions have been added for employees of an employer engaged in the business of operating taxicabs, and for employees in exempt retail or service establishments, not otherwise subject to the minimum-wage or overtime provisions, who handle telegraph messages under a contract or agency agreement where the total revenue from such business does not exceed $500 a month.

The present exemption for employees of small local newspapers is broadened to include any employee employed in connection with the

publication of any weekly or semiweekly newspaper with a circulation of less than 5,000 (instead of 3,000), the major part of which circulation is within the county where printed and published.

The present exemption for switchboard operators employed in any public-telephone exchange which has less than 500 stations is retained without change. The minimum-wage exemption for learners, messengers, apprentices, and handicapped workers employed at subminimum rates pursuant to section 14 is likewise retained. The present exemption from sections 6 and 7 applicable to employees employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesmen is also continued. The exemption of employees employed in a local retailing capacity is deleted since such employees will be exempted to the extent necessary under the revised language of the retail- and service-establishment exemption.

## Administrative Provisions

### *A. Transfer to Secretary of Labor*

The committee found that there are a number of changes needed to improve the administration of the act and to permit the development of consistent policies on major questions of national labor standards. Important among these is the demonstrated need of strengthening the status of the Wage and Hour Division within the Department of Labor by recognizing it as a bureau of that Department with authority to administer the act vested in the Secretary as the head of that Department.

The need for centralizing the ultimate responsibility of administering the act in the Secretary is emphasized by the fact that employers subject to the Walsh-Healey Public Contracts Act are also generally subject to the Fair Labor Standards Act. Possible conflicts as to the policies to be followed in the administration of these statutes should be avoided and, they should be given consistent interpretation. The Secretary has the ultimate responsibility for determining the prevailing minimum wages and for administering the minimum-wage, overtime-compensation, and child-labor provisions of the Walsh-Healey Public Contracts Act. It is also his duty to determine prevailing wage rates on Government construction contracts under the Davis-Bacon Act and other Federal statutes. While both of these acts involve questions similar to those under the Fair Labor Standards Act, the Secretary of Labor has authority only with respect to the child-labor provisions of the act. The situation is thus presented where the responsibility for for the administration of the act is divided between the Secretary of Labor and the Administrator of the Wage and Hour Division.

The recent reports of the Commission on Organization of the Executive Branch of the Government call attention to the need of correcting the type of situation here disclosed. The Commission points out that a clear line of responsibility is essential to the efficient organization of the executive branch. In the report entitled "General Management of the Executive Branch," the Commission makes the following recommendation (recommendation No. 14):

> Under the President, the heads of departments must hold full responsibility for the conduct of their departments. There must be a clear line of authority reaching through every step of the organization and no subordinate should have authority independent from that of his superior.

The President has repeatedly recommended that the responsibility for the administration of the Federal labor programs be placed under the general leadership of the Secretary of Labor. Centralizing the responsibility for administering Federal statutes in the head of a Department follows a well-established precedent within the Government. For example, the Secretary of Agriculture administers more than 50 regulatory laws designed to protect the farmer and the consuming public, many of which regulate businesses dealing with farmers.

It should be noted that the proposal contemplates that the Wage and Hour Division created by the Fair Labor Standards Act is to continue in the Department of Labor as the Bureau of Wages and Hours, and is to be administered, under the direction and control of the Secretary, by the Administrator of Wages and Hours. The Administrator would continue to be appointed by the President and confirmed by the Senate as at present.

*B. Regulations*

The second basic feature of the bill designed to improve the administration of the act is the authorization to the Secretary to issue binding regulations to carry out the provisions of the act. A statute such as the Fair Labor Standards Act which covers a great multitude of business operations carried on by 650,000 establishments in the United States, must necessarily be phrased in broad and general terms. Experience has proved the desirability of minimizing the difficulties arising from uncertainty as to the meaning of doubtful terms and the application of the act to questionable situations. At the same time, it is equally important that provision be made to prevent the circumvention or evasion of the provisions of the act. Rule-making authority in the Secretary would in all of these instances, enable him to carry out the intention of the Congress in the most practical and effective manner.

The situations presented in the portal-to-portal and the longshore cases emphasize the type of problems which unavoidably arise. An authoritative ruling such as the Secretary would be permitted to make under the provisions of the bill on the questions involved in these cases would have been binding on the courts unless the courts found such ruling to be violative of the standards prescribed by the Administrative Procedure Act, and in the event the courts rejected such ruling, the employers would have been protected from liability. Thus the need for further legislation, as contained in the Portal-to-Portal Act of 1947, would in all probability never have arisen if there had been authority under the act to make regulations.

Problems which require a solution through regulation are not unique to the Fair Labor Standards Act. Similar problems have arisen with respect to a great many remedial statutes and have been satisfactorily solved by conferring the rule-making authority on the regulatory agency or department. For example, the Securities Act of 1933 authorizes the Securities and Exchange Commission to adopt and alter rules and regulations, including the definitions of technical and trade names. The Federal Communications Commission is authorized to issue rules and regulations governing telephone and telegraph carriers, and operators of other types of communication facilities. Rule-making authority has been conferred on the Civil Aeronautics

Administration, the Interstate Commerce Commission, and the Bureau of Marine Inspection and Navigation of the Department of Commerce. The Department of the Interior possesses broad rule-making powers over the Alaskan fisheries industry and matters such as taking of migratory birds and Alaskan game. Taxing statutes generally vest in the Treasury Department broad regulatory powers. In the field of Federal labor-relations legislation, the National Labor Relations Board is authorized "from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of the act." Similar authority is conferred upon the Secretary of Labor with respect to the administration of the Walsh-Healey Public Contracts Act, while the Copeland Anti-Kick-Back Act authorizes the Secretary of Labor to make "reasonable regulations" for carrying out the provisions of the act. These are only a few of the many regulatory statutes where Congress has seen fit to confer rule-making authority on the department or agency charged with their administration.

Following the filing of many employees' suits involving so-called portal-to-portal activities, Congress passed the Portal-to-Portal Act of 1947 providing a partial solution of this problem. While the act protects the employer from liability where he relies, under certain circumstances, on the rulings of the Administrator, it does not permit employees to claim any rights by virtue of any similar rulings which may be beneficial to their interests. While there is an obvious need to correct this inequitable situation, it is the committee's view that there is an even greater need for granting the rule-making authority to the Secretary in order that he may issue such rules and regulations as are necessary to carry out the purposes and prevent the evasion of the act. The provisions incorporated in the bill in this regard are entirely consistent with the provisions of the Administrative Procedure Act, and the exercise of this power by the Secretary of Labor would be subject to all the procedural requirements and all the safeguards provided in that Act.

*C. Payment of back wages*

Ever since the passage of the Fair Labor Standards Act in 1938 the Wage and Hour Division has followed the policy in those cases which did not justify litigation, of requesting employers to make voluntary restitution to employees affected of unpaid minimum wages or overtime compensation due under the provisions of this act. Testimony shows that several years ago the Division was able to collect about 85 percent of the unpaid wages due employees under the requirements of the act in those establishments inspected. The proporition which the Division has been able to restore to underpaid employees has declined very drastically in recent years and it now amounts to about 30 percent of the total amount due.

There are a variety of causes for this decline in voluntary restitution effectuated by the Division but the one which has impressed the committee most is the fact that an employer who does pay back the wages which he should have paid under the requirements of the act has no assurance that he will not be sued for an equivalent amount plus attorney's fees under the provisions of section 16 (b) of the act. One of the major results of section 16 (c) in the bill is to assure any employer who pays back wages in full under the supervision of the

Secretary of Labor that he need not worry about the possibility of suits for liquidated damages and attorney's fees. In order to assure equal treatment to all employers and to all employees under this provision, the Secretary is authorized, where an employer refuses to pay back wages found due as a result of the inspections under the act, to bring suit for such unpaid minimum wages at the request of the unpaid employees. Whether the employer pays voluntarily or suit is brought under this provision, the employer is protected against any additional suits for liquidated damages. The underpaid employee may choose between action by the Secretary for simply the amount which is owed to him and an individual action brought under section (b) for both back wages and liquidated damages together with a reasonable attorney's fee. The procedures provided for in this paragraph are similar to those used in administering practically all of the recent State minimum wage laws. The committee feels that this paragraph is essential to the equitable enforcement of the provisions of the act and that it should be welcomed by fair-minded employers who wish to make restitution for perhaps unwitting violations of the act by encouraging them to do so in such a manner as will insure that their liabilities will be limited to the amount of wages due.

### STATUTE OF LIMITATIONS

The committee further recommends that the Portal-to-Portal Act of 1947 be amended to provide a 4-year period of limitations on employee suits under the act instead of the present 2-year period. The Portal-to-Portal Act was passed primarily to eliminate what were considered "windfall" payments of wages resulting from one Supreme Court decision. That act, however, unduly limited the rights of employees to recover sums of money which rightly belong to them and which employers unlawfully withhold. Employees cannot, in the very nature of things, sue their employers without running grave risks of losing their jobs or being otherwise prejudiced in their employment tenure. By imposing an undue limitation on the time within which an employee may exercise his rights, the act causes employees to forego their rights rather than run the risks attendant on a lawsuit. In turn, such a condition provides little incentive to employers to comply with the act, or, at least, an attitude of indifference is created tending to perpetuate the very conditions which the act seeks to eliminate.

It is, of course, wholly impossible for the Wage and Hour Division to inspect every covered employer at least once every 2 years. An unduly short statute of limitations thus makes it practically impossible to enforce the law uniformly. Employers who violate the act to their own benefit thus can obtain competitive advantages over employers, who, as a day-to-day business practice, scrupulously observe the law.

Finally, a 2-year period is out of line with other statutes of limitations relating to recovery of money due under contracts and other business transactions. Surely a remedial action of Congress should be regarded with as much sanctity as a contract. The committee does not know of any reasons why employees should have their rights to recover their money restricted as unduly as results from the 2-year statute of limitations contained in the Portal-to-Portal Act.

## Sectional Analysis

Section 1 of the bill provides that this act may be cited as the "Fair Labor Standards Amendments of 1949."

Section 2 of the bill amends the Fair Labor Standards Act of 1938 as follows:

### SHORT TITLE

Section 1 provides that the act may be cited as the "Fair Labor Standards Act of 1949."

### FINDING AND DECLARATION OF POLICY

Section 2 reenacts and affirms the finding and declaration of the 1938 act. Its provisions are unchanged except to state that the Congress is exercising its power to regulate commerce with foreign nations. This additional reference is made for purposes of consistency with the extension of the minimum wage provisions of the act to seamen.

### DEFINITIONS

Section 3, relating to definitions, is unchanged except for the terms "commerce," "oppressive child labor," and "wage." The term "commerce" is amended to broaden the definition of the 1938 act, which now includes commerce "from any State to any place outside thereof," so that it includes "commerce between any State and any place outside thereof." Thus this change would cover for the first time foreign commerce into one State which does not thereafter involve commerce from one State to another.

The term "oppressive child labor" is amended by adding to its present scope so as to prohibit a parent from employing a child in his custody 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. This amendment closes a loophole in the present definition whereby a parent may employ such a child under 16 in such an occupation even though he could not employ a child of 16 or 17 years of age in the same occupation.

The term "wage" is revised specifically to include tips for which records are kept by the employer in accordance with regulations of the Secretary of Labor. This provision would not require an employer to claim tips as part of wages but it would permit him to do so provided he kept records of such tips as he desired to be included in the wage. The definition would exclude from the term the reasonable cost of furnishing an employee with board, lodging, or other facilities where such facilities are an incident of and necessary to his employment and practicably available only from the employer. This provision would require the payment of the minimum wage, free and clear, to such employees as seamen, meal service employees on common carriers, or employees in isolated lumber camps, who cannot, as a practical matter, obtain such facilities other than through the employer.

### ADMINISTRATION

Section 4 (a) amends the existing law to place its administration under the direction and control of the Secretary of Labor rather than the Administrator of the Wage and Hour Division. The Wage and Hour division would be continued as the Bureau of Wages and Hours in the Department of Labor with an Administrator appointed by the President by and with the advice and consent of the Senate.

Section 4 (c) authorizes the Secretary of Labor to make such regulations and orders as are necessary to carry out the provisions of the act, to prevent the circumvention or evasion thereof and to safeguard the wage-and-hour and child-labor provisions of the act. Employers are protected from liability for any act or omission in good faith in conformity with any regulation or order. It should be noted that the bill as introduced specifically stated that regulations may define terms and regulate, restrict, or prohibit industrial home work. The committee has omitted this specific reference because the provisions of section 4 (c) would otherwise permit such definitions or regulations and such reference is therefore unnecessary.

Section 4 (d), relating to personnel, section 4 (b), relating to the place of exercise of powers and duties under the act, and section 4 (e), relating to annual reports, contain necessary technical revisions required by the revision of section 4 (a).

### SPECIAL INDUSTRY COMMITTEES FOR PUERTO RICO AND THE VIRGIN ISLANDS

Under section 5, the Secretary of Labor is empowered to appoint either a special industry committee or separate industry committees to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico and the Virgin Islands, or to employees therein in particular industries. In determining such minimum wages the committee and the Secretary shall be subject to the provisions of section 8. Other provisions in this section are concerned with such matters as the composition, and compensation of the committees, and the Secretary's obligation to furnish legal and clerical assistance, to submit such data as he may have available on the matters referred to the committees, and to cause necessary witnesses to be brought before them.

### MINIMUM WAGES

Section 6 of the present act is amended by increasing the minimum wage to 75 cents an hour and by extending coverage to every employee employed in or about or in connection with any enterprise where his employer is engaged in commerce or in the production of goods for commerce. Subsection (c) of the present act is reenacted in essential respects as subsection (b) but amended to preserve existing wage orders for Puerto Rico and the Virgin Islands until superseded. Such wage orders would be extended, however, so as to apply to every employee in an industry subject to the wage order who is covered by subsection (a).

MAXIMUM HOURS

Section 7 (a) of the act which confines coverage to individual employees engaged in commerce or in the production of goods for commerce would be amended to extend coverage of the overtime provisions to each employee who is employed in or about or in connection with any enterprise where the employer is engaged in commerce or in the production of goods for commerce.

The bill modifies the present subsection 7 (b) (1) by extending the 1,000-hour limitation to 1,040 hours in any consecutive 26-week period. Moreover, to encourage the greater use of guaranteed annual employment plans, subsection 7 (b) (2) has been modified to provide for greater flexibility by validating annual employment plans which guarantee employees in any specified period of 52 consecutive weeks, not less than 1,840 hours of employment (or not less than 46 weeks at the normal number of hours worked per week, but not less than 30 hours per week) and which set the maximum number of hours which an employee may be required to work at a figure not greater than 2,080 hours. As a condition precedent to the validity of the plans authorized under subsections 7 (b) (1) and 7 (b) (2), the employer is required to pay extra compensation for hours worked in excess of 10 hours per day (as contrasted with the present 12-hour day provision) or for hours worked in excess of 50 hours in any week (as contrasted with the present 56-hour week provision).

This bill amends section 7 (b) (3) by expanding the exemption for seasonal industries to take care of peak load overtime needs of not only those industries which are found by the Secretary to be of a seasonal nature, but in order to compensate for the exemptions which are now contained in sections 7 (c), 13 (a) (5), and 13 (a) (10) and which have been deleted in the bill. The Secretary of Labor is authorized to grant a similar exemption to any industry "engaged in the handling or packing or storing or preparing or in the first processing or canning of agricultural or horticultural commodities in their raw or natural state or of fish or other aquatic form of animal or vegetable life or in the processing of cottonseed or the ginning or compressing of cotton, or in the slaughtering and dressing of poultry or in the making of dairy products, if such industry is found by the Secretary to be characterized by marked annually recurring seasonal peaks of operation." While this partial overtime exemption is limited to a period of not more than 14 workweeks in a calendar year, the Secretary is authorized to extend the exemption for not more than six additional weeks in the fresh fruits and vegetables industries when required to prevent the spoilage of such perishable fruits and vegetables. This exemption is likewise applicable only if the employer observes the requirement that he pay his employees, during such seasonal operations, overtime for hours worked in excess of 10 hours per day or 50 hours per week, as the case may be.

A new section 7 (c) excludes from overtime compensation under section 7 (a) any sums paid regardless of whether the employee has worked in excess of the maximum hours under such section or in amounts not based on the number of hours actually worked by him in excess of the maximum in each workweek. This limitation would not apply as to sums paid pursuant to section 7 (d). In addition,

any salaried employee must be paid overtime compensation, in addition to his salary for 40 hours of work, at a rate not less than one and one-half times the rate obtained by dividing his weekly salary by not more than 40. Representatives of employees certified as bona fide by the National Labor Relations Board are permitted to enter into collective-bargaining agreements providing for weekly guaranties provided that each of the following conditions is met: (1) The contract rate is $1.50 or more per hour and the employee is guaranteed and paid not less than one and one-half times such contract rate for all hours worked in excess of forty; (2) the contract provides a weekly guaranty of employment or pay for more than 40 hours and not more than 60 hours; and (3) the contract meets such other requirements and conditions as may be prescribed by the Secretary on the subject as necessary or appropriate to carry out the purposes of this subsection. The effects of these provisions are discussed above under the subject of maximum hours and overtime pay.

Section 7 (d) defines "regular rate" as all remuneration for employment except certain specified types of payments. Each of the seven subdivisions of subsection (d) is intended to provide a separate exclusion from "regular rate." Accordingly, a payment excluded under any one subdivision would not be deemed part of "regular rate" by reason of the fact that such payment may not be excluded by the language of any other subdivision. While each type of exclusion is carefully defined in the bill, in general (1) bona fide gifts and payments in the nature of gifts made at Christmas time or on other special occasions under specified conditions; (2) payments which are not made as compensation for hours of employment including payments for occasional periods when no work is performed due to vacation, illness, holiday, failure of the employer to provide sufficient work, and traveling expenses under certain conditions; (3) sums paid under specified conditions in recognition of services performed during a given period of time and so-called talent fees; and (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, are to be excluded in calculating the "regular rate" and such payments are not creditable toward overtime payments required by section 7.

The following extra compensation is not to be deemed a part of the regular rate at which an employee is employed, for the purpose of computing overtime compensation under section 7, and may be credited toward overtime payments required by such section:

(1) Under section 7 (d) (5), premium rates paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of 8 in a day or 40 in a workweek or in excess of the employee's normal working hours or regular working hours, as the case may be;

(2) Under section 7 (d) (6), premium rates for work on Saturdays, Sundays, or holidays or the regular days of rest or on the sixth or seventh day of the workweek where the premium rate is not less than one and one-half times the rate established in good faith for like work performed during nonovertime hours on other days; or

(3) Under section 7 (d) (7), premium rates for work outside of the basic, normal or regular workday (not exceeding 8 hours) or workweek

(not exceeding 40 hours) where the 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.

In this connection, it may be noted that the provisions referred to in paragraphs (2) and (3) above, although due to their textual relation to the other provisions of the bill differ slightly in wording from the wording of H. R. 858, Eighty-first Congress, first session, are intended to solve the identical problems which H. R. 858 seeks to solve with respect to the longshore, stevedoring, building and construction industries, and the discussion and specific examples set forth in House Report No. 121, accompanying H. R. 858 are equally comparable to the provisions of this bill.

Subsection 7 (e) permits overtime payments, under appropriate safeguards, at time and one-half the hourly or piece rates applicable during the overtime hours.

The provisions of section 7 (d) and (e) are discussed in more detail above under maximum hours and overtime pay.

### WAGE ORDERS

Section 8 of the present act is amended by limiting the issuance of wage orders which permit the payment of less than the statutory minimum to industries in Puerto Rico and the Virgin Islands. Subsection (a) states the policy of the act to reach an objective of a 75-cent minimum wage in such industries as rapidly as is economically feasible without substantially curtailing employment. Subsection (b) specifies that the minimum wage rates which the industry committee recommends and the Secretary approves, are not to give any industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands. Except for technical changes made necessary by raising the statutory minimum and placing the administration under the Secretary, subsections (c) and (d), setting forth the standards and procedures to govern the issuance of wage orders in Puerto Rico and the Virgin Islands, are the same as under the present act.

### ATTENDANCE OF WITNESSES

Except for a technical change, making reference to the Secretary of Labor instead of to the Administrator and the Chief of the Children's Bureau necessitated by changes in the act made elsewhere in the bill, section 9 is identical with section 9 of the present act.

### COURT REVIEW

Only necessary technical changes are made by the bill in section 10 of the present act to make it refer accurately to the United States courts of appeals in which review of industry wage orders in Puerto Rico and the Virgin Islands may be obtained, as specified in this section, and to substitute reference to the Secretary of Labor rather than the Administrator in accordance with changes made elsewhere in the bill.

INVESTIGATIONS, INSPECTIONS, AND RECORDS

Only necessary technical changes to substitute references to the Secretary of Labor rather than to the Administrator, in accordance with changes made elsewhere in the bill, have been made in section 11 of the present act.

CHILD LABOR

Section 12 of the present act prohibits the shipment or delivery for shipment in commerce of any goods produced in an establishment situated in the United States in or about which within 30 days prior to the removal of such goods therefrom any oppressive child labor has been employed. No change is made by the bill in subsection (a), which contains this provision.

Subsection (c) of the bill adds a new subsection to this section of the act by virtue of which the employment of oppressive child labor in commerce or in the production of goods for commerce is made a direct violation of the act. This prohibition also extends to employment in or about or in connection with any enterprise where the employer is engaged in commerce or in the production of goods for commerce.

EXEMPTIONS

Section 13 (a) exempts from the minimum-wage, overtime, and child-labor provisions of the act any employee of a retail or service establishment whose employer had a total annual volume of sales or servicing of not more than $500,000 during the preceding calendar year. It also exempts any employee engaged in the delivery of newspapers to the consumer.

Section 13 (b) amends section 13 (a) of the 1938 act and continues the present minimum-wage and overtime exemptions with respect to certain classes of employees but with some exceptions and modifications as indicated below.

Section 13 (b) (1) amends section 13 (a) (1) of the 1938 act by deleting the words "local retailing." This exemption with respect to employees employed in bona fide executive, administrative, or professional capacities is continued.

Section 13 (b) (2) of the bill amends section 13 (a) (5) of the 1938 act—catching, harvesting, etc., of various aquatic forms of animal and vegetable life—by incorporating certain technical changes and by deleting that portion of this subsection which extends the exemption to processing and other typically on-shore occupations.

Section 13 (b) (3) of the bill exempts any employees employed in agriculture, thus making no change from subsection 13 (a) (6) of the present act.

Section 13 (b) (4) exempts employees affected by regulations or orders of the Secretary of Labor issued under section 14, thus making no change from section 13 (a) (7) of the 1938 act except substituting the Secretary for the Administrator.

Section 13 (b) (5) extends the exemption under section 13 (a) (6) of the 1938 act for employees employed on certain weekly and semiweekly papers by increasing the maximum circulation requirement from 3,000 to 5,000, the major part of which is in the county where printed and published.

Section 13 (b) (6) continues the exemption of section 13 (a) (11) of the 1938 act with respect to switchboard operators.

Section 13 (b) (7) exempts employees of employers engaged in business of operating taxicabs.

Section 13 (c) (1) of the bill supplants section 13 (b) (1) of the 1938 act by deleting the overtime exemption for employees of motor carriers with respect to which the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the Motor Carrier Act and confining this overtime exemption to employees employed during the greater part of the workweek as a driver or helper in over-the-road transport operations.

Section 13 (c) (2) of the bill limits the section 13 (b) (2) overtime exemption of the 1938 act for employers subject to part I of the Interstate Commerce Act, so that it would apply only to express and sleeping-car companies and rail carriers, thereby making pipe-line-carrier employees subject to the overtime provisions.

Section 13 (c) (3) of the bill supplants the section 13 (a) (4) exemption of the 1938 act as to air carriers and grants an overtime exemption only for flight personnel employed by an air carrier on an aircraft in flight.

Section 13 (c) (4) of the bill exempts seamen from the overtime provisions only.

### LEARNERS, APPRENTICES, AND HANDICAPPED WORKERS

Section 14 authorizes the employment of learners, apprentices, messengers, and handicapped workers at rates lower than the statutory minimum under special certificate issued by the Administrator pursuant to such general rules or orders he may issue on the subject. The bill (sec. 14) makes no change in these provisions other than to vest the Administrator's functions in this regard in the Secretary of Labor.

### PROHIBITED ACTS

Section 15 (a) (1) makes it unlawful for any person "to transport, offer for transportation, ship, deliver, or sell with knowledge that delivery or sale thereof in commerce is intended" any goods produced in violation of the act's minimum-wage and overtime provisions. Thus a purchaser who ships in commerce goods produced by another person who violated the wage-and-hour provisions of the act in the production of such goods, commits an unlawful act. In order that purchasers may protect themselves from unintentionally violating the act by shipping such so-called "hot goods" in commerce, the bill amends this section to provide that if a purchaser (1) proves that he did not know that such goods were produced in violation of the act, and further (2) that he acted in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the act, then such purchaser's act in shipping such "hot goods" in commerce shall not be deemed unlawful.

The bill makes no changes in the remaining provisions of section 15, except to make unlawful the violation of a regulation or order of the Secretary issued under section 4 (c).

PENALTIES

Section 16 is amended by the bill by the addition of a new subsection 16 (c). Subsection 16 (c) provides authority for the Secretary of Labor to supervise the payment of unpaid minimum wages and unpaid overtime compensation due an employee under the act, and provides further that the agreement of any employee to accept such payment will, upon payment in full constitute a waiver by him of any rights he may have under subsection 16 (b) to recover the unpaid minimum wages or overtime compensation and an additional amount as liquidated damages. In the event that the employer refuses to pay the wages which are owed under the act to any employee, subsection 16 (c) provides further authority for the Secretary to institute suit in any court of competent jurisdiction to recover any unpaid wages or overtime due an employee under the act. Such suit may be brought by the Secretary at the request or with the consent of any employee to whom such back wages are owed. This subsection further provides that when an employee consents to such suit he waives his right of action under subsection 16 (c) to sue for minimum wages, overtime compensation, and an additional equal amount as liquidated damages. Sums collected by the Secretary on behalf of an employee must be held in a special account and must be paid on order of the Secretary directly to the employee affected.

INJUNCTION PROCEEDINGS

Section 17 conferring jurisdiction on the district court of the United States and the United States courts of the Territories and possessions to restrain any of the acts prohibited by section 15, makes a technical change by eliminating an unnecessary reference to U. S. C., 1934 edition, title 28, section 381.

RELATION TO OTHER LAWS—SEPARABILITY PROVISIONS

Section 18 (relation to other laws) and section 19 (separability provisions) remain unchanged.

Section 3 of the bill amends the Portal-to-Portal Act of 1947 by substituting a 4-year statute of limitations for the present 2-year period and by transferring the functions and duties conferred upon the Administrator under section 10 of the Portal-to-Portal Act from the Administrator to the Secretary of Labor to be administered under his direction and control.

Section 4 of the bill provides in subsection (a) that the amendments shall become effective 120 days from the effective date of the act, except that the Secretary of Labor may exercise the functions conferred upon him immediately. Likewise the provisions of the bill relating to overtime compensation come into full force and effect from and after the date of the enactment of the bill. Subsection (b) provides for the carry-over of any orders, regulations, agreements, or interpretations of the Administrator or the Secretary, where not inconsistent with this bill, from the Fair Labor Standards Act of 1938 to the Fair Labor Standards Act of 1949. Subsection (c) contains a saving clause with respect to any penalty or liability arising out of any act or omission occurring prior to the effective date of the Fair Labor Standards Act of 1949 for a period of 4 years.

## Comparison Between the Committee Substitute and Existing Law

For the information of the Members of the House, changes in the existing law which would be made by the committee substitute are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

"Sec. 1. This Act may be cited as the 'Fair Labor Standards Act of [1938] *1949*'.

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

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

"DEFINITIONS

"Sec. 3. As used in this Act—

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

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

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

"(d) 'Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

"(e) 'Employee' includes any individual employed by an employer.

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

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

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

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

"(j) 'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary 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 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 tips received by such employee for which records are kept by the employer in accordance with regulations of the Secretary, and* includes the reasonable cost, as determined by the [Administrator] Secretary, 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 in the wage paid to any employee if the furnishing of such facilities is an incident of and necessary to his employment and such facilities are practicably available only from the employer.*

"[ADMINISTRATOR] *ADMINISTRATION*

"SEC. 4. (a) [There is hereby created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division (in this Act referred to as the 'Administrator'). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of $10,000 a year.] *The provisions of this Act shall be administered by the Secretary of Labor (in this Act referred to as the 'Secretary') and, subject to his direction and control by such officers and agencies of the Department of Labor as the Secretary may designate. The Wage and Hour Division created by the Fair Labor Standards Act of 1938 is hereby continued in the Department of Labor as the Bureau of Wages and Hours. The Bureau shall be administered under the direction and control of the Secretary by an Administrator, to be known as the Administrator of Wages and Hours, who shall be appointed by the President by and with the advice and consent of the Senate. The Administrator of the Wage and Hour Division under the Fair Labor Standards Act of 1938 shall be the Administrator of Wages and Hours under this Act unless and until a successor is appointed pursuant to this section. The Administrator of Wages and Hours shall receive compensation at the rate of $15,000 a year.*

"(b) The [Administrator] *Secretary* may, subject to the civil service laws appoint such employees as he deems necessary to carry out his functions and duties under this Act and shall fix their compensation in accordance with the Classification Act of 1923, as amended. The [Administrator] *Secretary* may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed [under this section] *by the Secretary* may appear for and represent the [Administrator] *Secretary* in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the [Administrator] *Department of Labor for the administration of this Act*, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

"(c) *The Secretary shall have power to make, issue, amend, and rescind such regulations and orders as are necessary or appropriate to carry out any of the pro-*

*visions of this Act, to prevent the circumvention or evasion thereof and to safeguard the minimum wage rates, the maximum hours and the child labor provisions thereof. No provision of this Act imposing any liability or disability shall apply to any act done or omitted in good faith in conformity with any such regulation or order, notwithstanding that such regulation or order may, after such act or omission, be amende or rescinded or determined by judicial authority to be invalid for any reason.*

"[(c)] *(d)* The [principal office of the Administrator shall be in the District of Columbia, but he] *Secretary* or his duly authorized representative may exercise any or all of his powers *under this Act* in any place.

"[(d)] *(e)* The [Administrator] *Secretary* shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this Act as he may find advisable.

[INDUSTRY COMMITTEES

["SEC. 5. (a) The Administrator shall as soon as practicable appoint an industry committee for each industry engaged in commerce or in the production of goods for commerce.

["(b) 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) 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) 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.

["(e) No industry committee appointed under subsection (a) of this section shall have any power to recommend the minimum rate or rates of wages to be paid under section 6 to any employees in Puerto Rico or in the Virgin Islands. Notwithstanding any other provision of this Act, the Administrator may appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to all employees in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce, or the Administrator may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under section 6 to employees therein engaged in commerce or in the production of goods for commerce in particular industries. An industry committee appointed under this subsection shall be composed of residents of such island or islands where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of Puerto Rico and the Virgin Islands. In determining the minimum rate or rates of wages to be paid, and in determining classifications, such industry committees and the Administrator shall be subject to the provisions of section 8 and no such committee shall recommend, nor shall the Administrator approve, a minimum wage rate which will 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.

["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 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.]

*"SPECIAL INDUSTRY COMMITTEES FOR PUERTO RICO AND THE VIRGIN ISLANDS*

*"SEC. 5. (a) The Secretary shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, or the Secretary may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under section 6 to employees therein in particular industries. An industry committee appointed under this subsection shall be composed of residents of such island or islands where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of Puerto Rico and the Virgin Islands. In determining the minimum rate or rates of wages to be paid, and in determining classifications, such industry committees and the Secretary shall be subject to the provisions of section 8.*

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

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

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

"MINIMUM WAGES

"SEC. 6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce, *and every employer who is engaged in commerce or in the production of goods for commerce shall pay to each of his employees employed in or about or in connection with any enterprise where he is so engaged, wages at the following rates—*

[ "(1) during the first year from the effective date of this section, not less than 25 cents an hour,

[ (2) during the next six years from such date, not less than 30 cents an hour,

[ "(3) after the expiration of seven years from such date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator issued under section 8, whichever is lower, and

[ "(4) at any time after the effective date of this section, not less than the rate (not in excess of 40 cents an hour) prescribed in the applicable order of the Administrator issued under section 8,]

*"(1) not less than 75 cents an hour;*

"[(5)] *(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,] *Secretary*, 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.

"[(b) This section shall take effect upon the expiration of one hundred and twenty days from the date of enactment of this Act.

"[(c) The provisions of paragraphs (1), (2), and (3) of subsection (a) of this section shall be superseded in the case of any employee in Puerto Rico or the Virgin Islands engaged in commerce or in the production of goods for commerce only for so long as and insofar as such employee is covered by a wage order issued by the Administrator pursuant to the recommendations of a special industry committee appointed pursuant to section 5 (e).]

*"(b) The provisions of paragraph (1) of subsection (a) of this section shall be superseded in the case of any employee in Puerto Rico or the Virgin Islands only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued pursuant to the recommendations of a special industry committee appointed pursuant to section 5 (e): Provided, That the wage order in effect prior to the effective date of this Act for any industry in Puerto Rico or the Virgin Islands shall apply to every employee in such industry covered by subsection (a) of this section until superseded by a wage order hereafter issued pursuant to the recommendations of a special industry committee appointed pursuant to section 5.*

"MAXIMUM HOURS

"SEC. 7. [(a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

"[(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

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

"[(3) for a workweek longer than forty hours after the expiration of the second year from such date,

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

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

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

"[(2) on an annual basis in pursuance of an agreement with his employer, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that the employee shall not be employed more than two thousand and eighty hours during any period of fifty-two consecutive weeks, or

"[(3) for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year in an industry found by the Administrator to be of a seasonal nature,

and if such employee receives compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 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) In the case of an employer engaged in the first processing of milk, whey, skimmed milk, or cream into dairy products, or in the ginning and compressing of cotton, or in the processing of cottonseed, or in the processing of sugar beets, sugar beet molasses, sugarcane, or maple sap, into sugar (but not refined sugar) or into syrup, the provisions of subsection (a) shall not apply to his employees in any place of employment where he is so engaged; and in the case of an employer engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits or vegetables, or in the first processing, within the area of production

(as defined by the Administrator), or any agricultural or horticultural commodity during seasonal operations, or in handling, slaughtering, or dressing poultry or livestock, the provisions of subsection (a), during a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, shall not apply to his employees in any place of employment where he is so engaged.

"[(d) This section shall take effect upon the expiration of one hundred and twenty days from the date of enactment of this Act.]

"(a) *Except as otherwise provided in this section, no employer shall employ any of his employees who is engaged in commerce or in the production of goods for commerce, and no employer who is engaged in commerce or in the production of goods for commerce shall employ any of his employees employed in or about or in connection with any enterprise where he is so engaged, 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.*

"(b) *No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee receives compensation for employment in excess of ten hours in any workday, or for employment in excess of fifty 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, and 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 guarantee which are also in excess of forty hours in the workweek 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) *for a period or periods of not more than fourteen workweeks in the aggregate in the calendar year (a) in any industry found by the Secretary to be of a seasonal nature, or (b) in any other industry engaged in the handling or packing or storing or preparing or in the first processing or canning of agricultural or horticultural commodities in their raw or natural state or of fish or other aquatic form of animal or vegetable life or in the processing of cottonseed or the ginning or compressing of cotton, or in the slaughtering and dressing of poultry or in the making of dairy products, if such industry is found by the Secretary to be characterized by marked annually recurring seasonal peaks of operation: Provided, That when the Secretary finds that in an industry engaged in the handling or packing or storing or preparing, or in the first processing or canning of fresh fruits and vegetables an additional number of weeks of exemption are required to prevent the spoilage of such perishable fresh fruits and vegetables, he is authorized to extend the exemption for additional weeks not to exceed a total of six.*

"(c) *Except as provided in subsection (d) of this section, sums paid by an employer to an employee regardless of whether the employee has worked in excess of the maximum number of hours specified in this section, or in amounts not based on the number of hours actually worked by him in excess of such maximum in each workweek, shall not be deemed payments of premium compensation required by this section for overtime employment; and notwithstanding any other provision of this section, any salaried employee who is employed in excess of forty hours in any workweek shall be paid for each such hour in excess of forty, in addition to his salary for forty hours of work, at a rate not less than one and one-half times the hourly rate obtained by dividing his weekly salary by not more than forty: Provided, That as to any employee employed in pursuance of a collective-bargaining agreement, made by representatives of employees certified as bona fide by the National Labor Relations Board, which (1) provides a contract regular rate of pay of not less than $1.50 an hour for such employee and compensation at not less than one and one-half times such rate for all hours worked in*

*excess of forty, (2) provides a weekly guaranty of employment or pay for more than forty hours and not more than sixty hours, and (3) meets the requirements of regulations promulgated by the Secretary of Labor prescribing such conditions as he shall determine to be necessary or appropriate to carry out the purposes of this Act, this subsection shall not be applicable.*

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

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

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

*"(3) sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, promise, arrangement, or a custom or practice causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust, meeting the requirements of the Secretary of Labor 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) talent fees (as such term is defined and delimited by regulations of the Secretary) paid to performers, including announcers, on radio and television programs;*

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

*"(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or forty in a workweek 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, or holidays, 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;*

*"(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 forty hours), 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.*

*"(e) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of forty hours 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 such employment in excess of forty hours—*

*"(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;*

*and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (d) 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.*

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

[''WAGE ORDERS

[''SEC. 8. (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 classifications therein.

[''(b) Upon the convening of an 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, may 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.

[''(c) The industry committee for any industry 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 40 cents an hour) which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum wage rate which the committee determines will not substantially curtail employment in such classification. In determining whether such classifications should be made in any industry, in making such classifications, and in determining the minimum wage rates for such classifications, no classifications shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee and the Administrator shall consider among other relevant factors the following:

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

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

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

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

[''(d) The industry committee shall file with the 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.

[''(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) 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. 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.

[*"(g) 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.*]

*"WAGE ORDERS IN PUERTO RICO AND THE VIRGIN ISLANDS*

*"SEC. 8. (a) The policy of this Act with respect to industries 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 a minimum wage of 75 cents an hour in each such industry. The Secretary 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 in any such industry or classifications therein.*

*"(b) Upon the convening of any such industry committee, the Secretary shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, may hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this Act. The committee shall recommend to the Secretary the highest minimum wage rates for the industry which it determines, 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.*

*"(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 75 cents an hour) 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 classification, and in determining the minimum wage rates for wuch classifications, no classifications shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee and the Secretary shall consider among other relevant factors the following:*

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

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

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

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

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

*"(e) Orders issued under this section shall define the industries and classifications therein to which they are to apply, and shall contain such terms and conditions as the Secretary finds necessary to carry out the purposes of such orders, to prevent the circumvention or evasion thereof, and to safeguard the minimum-wage rates established therein. 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 Secretary deems reasonably calculated to give to interested persons general notice of such issuance.*

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

"ATTENDANCE OF WITNESSES

"SEC. 9. For the purpose of any hearing or investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U. S. C., 1946 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 [Administrator] *Secretary* issued under section 8 may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein such person resides or has his principal places of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the [Administrator] *Secretary* be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon the [Administrator] *Secretary*, and thereupon the [Administrator] *Secretary* shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript 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 the [Administrator] *Secretary* when supported by substantial evidence shall be conclusive. No objection to the order of the [Administrator] *Secretary* shall be considered by the court unless such objection shall have been urged before the [Administrator] *Secretary* 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 proceeding before the [Administrator] *Secretary*, the court may order such additional evidence to be taken before the [Administrator] *Secretary* and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The [Administrator] *Secretary* may modify his 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 his 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 [sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).] *title 28, United States Code, section 1254.*

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

"INVESTIGATIONS, INSPECTIONS, AND RECORDS

"SEC. 11. (a) The [Administrator] *Secretary* or his designated representatives may investigate and gather data regarding the wages, hours, *employment of minors,* 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] *Secretary* shall bring all actions under section 17 to restrain violations of this Act.

"(b) With the consent and cooperation of State agencies charged with the administration of State labor laws, [the Administrator and] the Secretary [of Labor] may, for the purpose of carrying out [their respective] *his* functions and duties under this Act, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

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

"CHILD LABOR PROVISIONS

"SEC. 12. (a) [After the expiration of one hundred and twenty days from the date of enactment of this Act no] *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 a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

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

*"(b) No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce and no employer who is engaged in commerce or in the production of goods for commerce shall employ any oppressive child labor in or about or in connection with any enterprise where he is so engaged.*

*"EXEMPTIONS*

*"SEC. 13. (a) The provisions of sections 6, 7, and 12 shall not apply with respect to (1) any employee engaged in the delivery of newspapers to the consumer; or (2) any employee of a retail or service establishment whose employer had a total annual volume of sales or servicing of not more than $500,000 during the preceding calendar year. An establishment shall not be deemed a retail or service establishment within the meaning of this subsection if more than 25 per centum of its annual dollar volume during the preceding calendar year was derived from activities other than retail selling or servicing. As used in this subsection, 'retail selling or servicing' means selling or servicing to private individuals for personal or family consumption, or selling or servicing (but not for resale) where (1) the goods sold or serviced do not differ materially either in type or quantity from goods normally sold or serviced for such personal or family consumption, or where (2) the customer is a farmer and the goods sold or serviced are of types and in quantities used by the ordinary farmer in his farming operations.*

"[(a)] *(b)* 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 [or local retailing] capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the [Administrator] *Secretary*); or [(2) any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce; or (3) any employee employed as a seaman; or (4) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act;] or [(5)] *(2)* 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, including the going to and returning from work and including employment in the loading [,] *and* unloading, *when*

*performed by any such employee and in the icing, cleaning, salting, or other preparation of such products in their raw state for shipment from the place of unloading to market or to processors*; [or packing of such products for shipment or in propagating, processing, marketing, freezing, canning, curing, storing, or distributing the above products or byproducts thereof;] or [(6)] (*3*) any employee employed in agriculture; or [(7)] (*4*) any employee to the extent that such employee is exempted by regulations or orders of the [Administrator] *Secretary* issued under section 14; or [(8)] (*5*) any employee employed in connection with the publication of any weekly or semiweekly newspaper with a circulation of less than *five* thousand the major part of which circulation is within the county where printed and published; or [(9) any employee of a street, suburban, or interurban electric, railway, or local trolley or motor bus carrier, not included in other exemptions contained in this section; or (10) to any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing, ginning, 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 (11)] (*6*) any switchboard operator employed in a public telephone exchange which has less than five hundred stations*; or (7) any employee of an employer engaged in the business of operating taxicabs; or (8) any employee or proprietor in a retail or service establishment as defined in subsection (a) of this section, 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.*

"[(b)] (*c*) The provisions of section 7 shall not apply with respect to (1) [any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or (2) any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act.] *any employee employed during the greater part of any workweek as a driver or helper riding a motor vehicle in the performance of over-the-road transport operations (as defined by the Secretary of Labor); or (2) any employee of an employer which is an express company, sleeping car company, or carrier by railroad subject to Part I of the Interstate Commerce Act; or (3) any employee employed as flight personnel on an aircraft by a carrier by air subject to title II of the Railway Labor Act; or (4) any employee employed as a seaman.*

"[(c)] (*d*) The provisions of section 12 relating to child labor shall not apply with respect to any employee employed in agriculture [while not legally required to attend school,] *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.*

"LEARNERS, APPRENTICES, AND HANDICAPPED WORKERS

"SEC. 14. The [Administrator] *Secretary,* 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, and of messengers employed exclusively in delivering letters and messages, under special certificates issued pursuant to regulations of the [Administrator] *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 [Administrator] *Secretary* 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] *Secretary,* at such wages lower than the minimum wage applicable under section 6 and for such period as shall be fixed in such certificates.

"PROHIBITED ACTS

"SEC. 15. (a) [After the expiration of one hundred and twenty days from the date of enactment of this Act, it] *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] *Secretary* issued under section 14; except that *any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them after such violation occurred shall*

*not be deemed unlawful if such purchaser proves that he was without knowledge of such violation, and acted 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* 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;

"(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] *Secretary* issued under *section 4 (c) or* 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 to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

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

"PENALTIES

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

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

"*(c) 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 6 or section 7 of this Act, and the agreement of any employee to accept such payment shall upon payment in full consitutute 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. At the request or with the consent of any employee claiming unpaid minimum wages or unpaid overtime compensation under section 6 or section 7 of this Act, the Secretary may bring an action in any court of competent jurisdiction to recover the amount of any such claim. The Secretary may join in one cause of action the claims of any employees similarly situated who consent thereto. The consent of any employee to the bringing of any such action by the Secretary, unless such action is dismissed without prejudice on motion of the Secretary, shall constitute a waiver by such employee of any right 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. Any sums thus recovered by the Secretary on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts: Provided, That nothing in this subsection shall affect or limit in any way the full equitable jurisdiction of the courts under section 17 of this Act.*

"INJUNCTION PROCEEDINGS

"SEC. 17. 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 17 (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., 1946 edition, title 28, sec. 381),] to restrain violations of section 15.

"RELATION TO OTHER LAWS

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

"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."

PORTAL-TO-PORTAL ACT OF 1947

* * * * * * *

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

(a) if the cause of action accrues on or after the date of the enactment of this Act—may be commenced within [two] *four* years after the cause of action accrued, and every such action shall be forever barred unless commenced within [two] *four* years after the cause of action accrued;

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

* * * * * * *

SEC. 10. RELIANCE IN FUTURE ON ADMINISTRATIVE RULINGS, ETC.—

(a) In any action or proceeding based on any act or omission on or after the date of the enactment of this Act, no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act, if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation, of the agency of the United States specified in subsection (b) of this section, or any administrative practice or enforcement policy of such agency with respect to the class of employers to which he belonged. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

(b) The agency referred to in subsection (a) shall be—

(1) in the case of the Fair Labor Standards Act of 1938, as amended—the Administrator of the Wage and Hour Division of the Department of Labor;

(2) in the case of the Walsh-Healey Act—the Secretary of Labor, or any Federal officer utilized by him in the administration of such Act; and

(3) in the case of the Bacon-Davis Act—the Secretary of Labor.

Section 3 (b) of the committee substitute affects section 10 of the Portal-to-Portal Act as follows:

(b) The functions and duties of the Administrator of the Wage and Hour Division of the Department of Labor under section 10 of the Portal to Portal Act of 1947 (Public, Numbered 49, Eightieth Congress, first session) are hereby transferred to the Secretary of Labor and shall be administered under his direction and control.

## CHANGES IN EXISTING LAWS

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

"SEC. 1. This Act may be cited as the 'Fair Labor Standards Act of [1938] *1949*'.

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

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

"DEFINITIONS

"SEC. 3. As used in this Act—

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

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

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

"(d) 'Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

"(e) 'Employee' includes any individual employed by an employer.

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

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

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

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

"(j) 'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary 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 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 tips received by such employee for which records are kept by the employer in accordance with regulations of the Secretary, and* includes the reasonable cost, as determined by the [Administrator] *Secretary*, 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 in the wage paid to any employee if the furnishing of such facilities is an incident of and necessary to his employment and such facilities are practicably available only from the employer: Provided further, That the wage paid to any employee employed in agriculture, includes the average cost or average market value under regulations of the Secretary, of board, lodging, and other facilities of the type customarily furnished to the employee.*

"(n) *'Hired farm labor' includes the labor of any person employed on a farm, except the labor of the farmer and his immediate family.*

"(o) *'Man-day' means any day on which a hired farm laborer performs any work.*

"(p) *'Farm enterprise' comprises all tracts of land, whether contiguous or not, under one management, located in a county and immediately adjacent counties, on which any of the operations enumerated in section 3 (f) is carried on.*

"[ADMINISTRATOR] *ADMINISTRATION*

"SEC. 4. (a) [There is hereby created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division (in this Act referred to as the 'Administrator'). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of $10,000 a year.] *The provisions of this Act shall be administered by the Secretary of Labor (in this Act referred to as the 'Secretary') and, subject to his direction and control by such officers and agencies of the Department of Labor as the Secretary may designate. The Wage and Hour Division created by the Fair Labor Standards Act of 1938 is hereby continued in the Department of Labor as the Bureau of Wages and Hours. The Bureau shall be administered under the direction and control of the Secretary by an Administrator, to be known as the Administrator of Wages and Hours, who shall be appointed by the President by and with the advice and consent of the Senate. The Administrator of the Wage and Hour Division under the Fair Labor Standards Act of 1938 shall be the Administrator of Wages and Hours under this Act unless and until a successor is appointed pursuant to this section. The Administrator of Wages and Hours shall receive compensation at the rate of $15,000 a year.*

"(b) The [Administrator] *Secretary* may, subject to the civil-service laws, appoint such employees as he deems necessary to carry out his functions and duties under this Act and shall fix their compensation in accordance with the Classification Act of 1923, as amended. The [Administrator] *Secretary* may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed [under this section] *by the Secretary* may appear for and represent the [Administrator] *Secretary* in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the [Administrator] *Department of Labor for the administration of this Act,* no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

"*(c) The Secretary shall have power to make, issue, amend, and rescind such regulations and orders (including, but without limitation, the definition of terms and the regulation, restriction, or prohibition of industrial home work) as are necessary or appropriate to carry out any of the provisions of this Act, to prevent the circumvention or evasion thereof and to safeguard the minimum wage wates, the maximum hours and the child labor provisions thereof. No provision of this Act imposing any liability or disability shall apply to any act done or omitted in good faith in conformity with any such regulation or order, notwithstanding that such regulation or order may, after such act or omission, be amended or rescinded or determined by judicial authority to be invalid for any reason.*

"[(c)] *(d)* The [principal office of the Administrator shall be in the District of Columbia, but he] *Secretary* or his duly authorized representative may exercise any or all of his powers *under this Act* in any place.

"[(d)] *(e)* The [Administrator] *Secretary* shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this Act as he may find advisable.

[INDUSTRY COMMITTEES

["SEC. 5. (a) The Administrator shall as soon as practicable appoint an industry committee for each industry engaged in commerce or in the production of goods for commerce.

["(b) 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) 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) 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.

["(e) No industry committee appointed under subsection (a) of this section shall have any power to recommend the minimum rate or rates of wages to be paid under section 6 to any employees in Puerto Rico or in the Virgin Islands. Notwithstanding any other provision of this Act, the Administrator may appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to all employees in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce or the Administrator may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under section

6 to employees therein engaged in commerce or in the production of goods for commerce in particular industries. An industry committee appointed under this subsection shall be composed of residents of such island or islands where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of Puerto Rico and the Virgin Islands. In determining the minimum rate or rate of wages to be paid, and in determining classifications, such industry committees and the Administrator shall be subject to the provisions of section 8 and no such committee shall recommend, nor shall the Administrator approve, a minimum wage rate which will 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.

[ "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 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. ]

*"SPECIAL INDUSTRY COMMITTEES FOR PUERTO RICO AND THE VIRGIN ISLANDS*

*"SEC. 5. (a) The Secretary shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, or the Secretary may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under section 6 to employees therein in particular industries. An industry committee appointed under this subsection shall be composed of residents of such island or islands where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of Puerto Rico and the Virgin Islands. In determining the minimum rate or rates of wages to be paid, and in determining classifications, such industry committees and the Secretary shall be subject to the provisions of section 8.*

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

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

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

"MINIMUM WAGES

"SEC. 6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce, *and every employer who is engaged in commerce or in the production of goods for commerce shall pay to each of his employees employed in or about or in connection with any enterprise where he is so engaged, wages at the following rates—*

[ "(1) during the first year from the effective date of this section, not less than 25 cents an hour,

[ "(2) during the next six years from such date, not less than 30 cents an hour,

[ "(3) after the expiration of seven years from such date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator issued under section 8, whichever is lower, and

[“(4) at any time after the effective date of this section, not less than the rate (not in excess of 40 cents an hour) prescribed in the applicable order of the Administrator issued under section 8,]

*“(1) not less than 75 cents an hour;*

“[(5)] *(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,] *Secretary*, 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.

“[(b) This section shall take effect upon the expiration of one hundred and twenty days from the date of enactment of this Act.

“[(c) The provisions of paragraphs (1), (2), and (3) of subsection (a) of this section shall be superseded in the case of any employee in Puerto Rico or the Virgin Islands engaged in commerce or in the production of goods for commerce only for so long as and insofar as such employee is covered by a wage order issued by the Administrator pursuant to the recommendations of a special industry committee appointed pursuant to section 5 (c).]

*“(b) The provisions of paragraph (1) of subsection (a) of this section shall be superseded in the case of any employee in Puerto Rico or the Virgin Islands only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued pursuant to the recommendations of a special industry committee appointed pursuant to section 5 (c): Provided, That the wage order in effect prior to the effective date of this Act for any industry in Puerto Rico or the Virgin Islands shall apply to every employee in such industry covered by subsection (a) of this section until superseded by a wage order hereafter issued pursuant to the recommendations of a special industry committee appointed pursuant to section 5.*

“MAXIMUM HOURS

“SEC. 7. [(a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

“[(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

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

“[(3) for a workweek longer than forty hours after the expiration of the second year from such date,

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

“[(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employees 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 hours during any period of twenty-six consecutive weeks,

"[(2) on an annual basis in pursuance of an agreement with his employer, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that the employee shall not be employed more than two thousand and eighty hours during any period of fifty-two consecutive weeks, or

"[(3) for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year in an industry found by the Administrator to be of a seasonal nature,

and if such employee receives compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 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) In the case of an employer engaged in the first processing of milk, whey, skimmed milk, or cream into dairy products, or in the ginning and compressing of cotton, or in the processing of cottonseed, or in the processing of sugar beets, sugar-beet molasses, sugarcane, or maple sap, into sugar (but not refined sugar) or into syrup, the provisions of subsection (a) shall not apply to his employees in any place of employment where he is so engaged; and in the case of an employer engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits or vegetables, or in the first processing, within the area of production (as defined by the Administrator), or any agricultural or horticultural commodity during seasonal operations, or in handling, slaughtering, or dressing poultry or livestock, the provisions of subsection (a), during a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, shall not apply to his employees in any place of employment where he is so engaged.

[(d) This section shall take effect upon the expiration of one hundred and twenty days from the date of enactment of this Act.]

*"(a) Except as otherwise provided in this section, no employer shall employ any of his employees who is engaged in commerce or in the production of goods for commerce, and no employer who is engaged in commerce or in the production of goods for commerce shall employ any of his employees employed in or about or in connection with any enterprise where he is so engaged, 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.*

*"(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee receives compensation for employment in excess of ten hours in any workday, or for employment in excess of fifty 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, and 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 guarantee which are also in excess of forty hours in the workweek 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) for a period or periods of not more than fourteen workweeks in the aggregate in the calendar year (a) in any industry found by the Secretary to be of a seasonal nature, or (b) in any other industry engaged in the handling or packing or storing or preparing or in the first processing or canning of agricultural or horticultural commodities in their raw or natural state or of fish or other aquatic form of animal or vegetable life or in the processing of cottonseed or the ginning or compressing of cotton, or in the slaughtering and dressing of poultry or in the making of dairy products, if such industry is found by the Secretary to be characterized by marked annually recurring seasonal peaks of operation.*

"(c) *Except as provided in subsection (d) of this section, sums paid by an employer to an employee regardless of whether the employee has worked in excess of the maximum number of hours specified in this section, or in amounts not based on the number of hours actually worked by him in excess of such maximum in each workweek, shall not be deemed payments of premium compensation required by this section for overtime employment; and notwithstanding any other provision of this section, any salaried employee who is employed in excess of forty hours in any workweek shall be paid for each such hour in excess of forty, in addition to his salary for forty hours of work, at a rate not less than one and one-half times the hourly rate obtained by dividing his weekly salary by not more than forty: Provided, That as to any employee employed in pursuance of a collective-bargaining agreement, made by representatives of employees certified as bona fide by the National Labor Relations Board, which (1) provides a contract regular rate of pay of not less than $1.50 an hour for such employee and compensation at not less than one and one-half times such rate for all hours worked in excess of forty, (2) provides a weekly guarantee of employment or pay for more than forty hours and not more than sixty hours, and (3) meets the requirements of regulations promulgated by the Secretary of Labor prescribing such conditions as he shall determine to be necessary or appropriate to carry out the purposes of this Act, this subsection shall not be applicable.*

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

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

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

"(3) *sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, promise, arrangement, or a custom or practice causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust, meeting the requirements of the Secretary of Labor 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) talent fees (as such term is defined and delimited by regulations of the Secretary) paid to performers on radio and television programs;*

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

"(5) *extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or forty in a workweek 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, or holidays, 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;*

"(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 in accordance with regulations issued by the Secretary by the contract or agreement as the basic, normal or regular workday (not exceeding eight hours) or workweek (not exceeding forty hours), 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.*

"(e) *No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of forty hours 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 such employment in excess of forty hours—*

*"(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;*

*and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (d) 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.*

*"(f) Extra compensation paid as described in paragraphs 5 and 7 of subsection (d) shall be creditable toward overtime compensation payable pursuant to this section.*

*"(g) Extra compensation paid as described in paragraph (6) of subsection (d) shall be creditable toward overtime compensation payable pursuant to this section only when the premium rate hours are worked after the fortieth hour in the workweek.*

[WAGE ORDERS

[SEC. 8. (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 classifications therein.

[(b) Upon the convening of an 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, may 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.

[(c) The industry committee for any industry 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 40 cents an hour) 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 minumum 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 and the Administrator shall consider among other relevant factors the following:

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

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

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

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

[(d) The industry committee shall file with the 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 ad-

duced 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.

[“(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) 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. 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.

[“(g) 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.]

*“WAGE ORDERS IN PUERTO RICO AND THE VIRGIN ISLANDS*

*“SEC. 8. (a) The policy of this Act with respect to industries 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 a minimum wage of 75 cents an hour in each such industry. The Secretary 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 in any such industry or classifications therein.*

*“(b) Upon the convening of any such industry committee, the Secretary shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, may hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this Act. The committee shall recommend to the Secretary the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands.*

*“(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 75 cents an hour) 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 classification, 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 and the Secretary shall consider among other relevant factors the following:*

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

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

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

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

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

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

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

"ATTENDANCE OF WITNESSES

"SEC. 9. For the purpose of any hearing or investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U. S. C., 1946 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 [Administrator] *Secretary* issued under section 8 may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein such person resides or has his principal places of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the [Administrator] *Secretary* be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon the [Administrator] *Secretary*, and thereupon the [Administrator] *Secretary* shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript 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 the [Administrator] *Secretary* when supported by substantial evidence shall be conclusive. No objection to the order of the [Administrator] *Secretary* shall be considered by the court unless such objection shall have been urged before the [Administrator] *Secretary* 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 proceeding before the [Administrator] *Secretary*, the court may order such additional evidence to be taken before the [Administrator] *Secretary* and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The [Administrator] *Secretary* may modify his 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 his 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 sections 239 and 240 of the Judicial Code, as amended (U. S. C. title 28, secs. 346 and 347).

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

"INVESTIGATIONS, INSPECTIONS, AND RECORDS

"SEC. 11. (a) The [Administrator] *Secretary* or his designated representatives may investigate and gather data regarding the wages, hours, *employment of minors,* 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] *Secretary* shall bring all actions under section 17 to restrain violations of this Act.

"(b) With the consent and cooperation of State agencies charged with the administration of State labor laws, [the Administrator and] the Secretary [of Labor] may, for the purpose of carrying out [their respective] *his* functions and duties under this Act, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

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

"CHILD LABOR PROVISIONS

"SEC. 12. (a) [After the expiration of one hundred and twenty days from the date of enactment of this Act no] *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 a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

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

"*(b) No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce and no employer who is engaged in commerce or in the production of goods for commerce shall employ any oppressive child labor in or about or in connection with any enterprise where he is so engaged.*

"*EXEMPTIONS*

"SEC. 13. (a) *The provisions of sections 6, 7, and 12 shall not apply with respect to (1) any employee engaged in the delivery of newspapers to the consumer; or (2) any employee of a retail or service establishment whose employer had a total annual volume of sales or servicing of not more than $500,000 during the preceding calendar year. An establishment shall not be deemed a retail or service establishment within*

*the meaning of this subsection if more than 25 per centum of its annual dollar volume during the preceding calendar year was derived from activities other than retail selling or servicing. As used in this subsection, 'retail selling or servicing' means selling or servicing to private individuals for personal or family consumption, or selling or servicing (but not for resale) where (1) the goods sold or serviced do not differ materially either in type or quantity from goods normally sold or serviced for such personal or family consumption, or where (2) the customer is a farmer and the goods sold or serviced are of types and in quantities used by the ordinary farmer in his farming operations.*

"[(a)] (*b*) 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 [or local retailing] capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the [Administrator] *Secretary*); or [(2) any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce; or (3) any employee employed as a seaman; or (4) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act;] or [(5)] (*2*) 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, including the going to and returning from work and including employment in the loading [,] *and* unloading, *when performed by any such employee*; [or packing of such products for shipment or in propagating, processing, marketing, freezing, canning, curing, storing, or distributing the above products or byproducts thereof;] or [(6)] (*3*) any employee employed in agriculture *except in a farm enterprise employing in excess of 5,000 man-days of hired farm labor during the preceding calendar year*; or [(7)] (*4*) any employee to the extent that such employee is exempted by regulations or orders of the [Administrator] *Secretary* issued under section 14; or [(8)] (*5*) any employee employed in connection with the publication of any weekly or semiweekly newspaper with a circulation of less than [three] *five* thousand the major part of which circulation is within the county where printed and published; or [(9) any employee of a street, suburban, or interurban electric railway, or local trolley or motor bus carrier, not included in other exemptions contained in this section; or (10) to any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing, ginning, 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 (11)] (*6*) any switchboard operator employed in a public telephone exchange which has less than five hundred stations*; or (7) any employee of an employer engaged in the business of operating taxicabs.*

"[(b)] (*c*) The provisions of section 7 shall not apply with respect to (1) [any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or (2) any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act.] *any employee employed during the greater part of any workweek as a driver or helper riding a motor vehicle in the performance of over-the-road transport operations (as defined by the Secretary of Labor); or (2) any employee of an employer which is an express company, sleeping car company, or carrier by railroad, subject to Part I of the Interstate Commerce Act; or (3) any employee employed as flight personnel on an aircraft by a carrier by air subject to title II of the Railway Labor Act; or (4) any employee employed as a seaman; or (5) any employee employed in agriculture not included in subsection (b) (3) of this section.*

"[(c)] (*d*) The provisions of section 12 relating to child labor shall not apply with respect to any employee employed in agriculture (*except in a farm enterprise employing in excess of 5,000 man-days of hired farm labor during the preceding calendar year*) [while not legally required to attend school,] *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.*

"LEARNERS, APPRENTICES, AND HANDICAPPED WORKERS

"SEC. 14. The [Administrator] *Secretary*, 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, and of messengers employed exclusively in delivering letters and messages, under special certificates issued pursuant to regulations of the [Administrator] *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 [Administrator] *Secretary* 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] *Secretary*, at such wages lower than the minimum wage applicable under section 6 and for such period as shall be fixed in such certificates.

"PROHIBITED ACTS

SEC. 15. (a) [After the expiration of one hundred and twenty days from the date of enactment of this Act, it] *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 entended, 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] *Secretary* issued under section 14; except that *any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them after such violation occurred shall not be deemed unlawful if such purchaser proves that he was without knowledge of such violation, and acted 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* 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;

"(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] *Secretary* issued under *section 4 (c) or* 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 to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

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

"PENALTIES

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

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

"(c) *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 6 or section 7 of this Act, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages*

*or unpaid overtime compensation and an additional equal amount as liquidated damages. At the request or with the consent of any employee claiming unpaid minimum wages or unpaid overtime compensation under section 6 or section 7 of this Act, the Secretary may bring an action in any court of competent jurisdiction to recover the amount of any such claim. The Secretary may join in one cause of action the claims of any employees similarly situated who consent thereto. The consent of any employee to the bringing of any such action by the Secretary, unless such action is dismissed without prejudice on motion of the Secretary, shall constitute a waiver by such employee of any right 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. Any sums thus recovered by the Secretary on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts: Provided, That nothing in this subsection shall affect or limit in any way the full equitable jurisdiction of the courts under section 17 of this Act.*

"INJUNCTION PROCEEDINGS

"SEC. 17. 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] *17* (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., 1946 edition, title 28, sec. 381), to restrain violations of section 15.

"RELATION TO OTHER LAWS

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

"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."

PORTAL TO PORTAL ACT OF 1947

* * * * * * *

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

(a) if the cause of action accrues on or after the date of the enactment of this Act—may be commenced within [two] *four* years after the cause of action accrued, and every such action shall be forever barred unless commenced within [two] *four* years after the cause of action accrued;

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

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

# MINORITY VIEWS

Throughout the hearings and consideration of amendments to the Fair Labor Standards Act by your committee, we have sought a bill which we could conscientiously support. We have attempted to point out to the majority that some of the language of this bill will have an effect far different than they apparently believe. While we cannot agree with a number of the provisions of the bill, our opposition is principally directed at three major weaknesses. They are: (1) Its extended coverage trespasses on local business, service, and marketing fields whose regulation should be with the States, (2) inadequate and loose definition of terms, and (3) the inflexible minimum wage rate which has been provided.

The Seventy-fifth Congress passed this law in 1938 with three principal objectives in mind: (1) To put a floor under wages, (2) to spread the available work by establishing a maximum workweek with a penalty overtime rate, and (3) to prohibit oppressive child labor practices. The Seventy-fifth Congress did not cover, among others, seamen, the employees of intrastate service or retail establishments, railway employees, local trolley or bus employees, or employees engaged in the processing, packing, or canning operations of agricultural, horticultural, or dairy products within the area of production. The legislative history of the act clearly demonstrates that the regulation of the wages and hours of these employees was never intended. Congress realized the inherent difficulties in applying such regulations in these fields of employment. H. R. 3190 would bring these employees either wholly or partially under coverage of the act.

Ever since its enactment a number of serious problems have arisen because terms used in the original Fair Labor Standards Act were not adequately defined. Suits for portal-to-portal pay and overtime on overtime would never have arisen if the terms of the act had been properly defined. We of the minority would like to have this bill written in Congress, and not leave such gaps in the language that the Secretary of Labor and the courts will be free to make the law, as they have in the past, through administrative interpretations and decisions. We know from past experience that uncertain and inconspicuous phrases in the Fair Labor Standards Act have been interpreted to defeat the will of Congress.

The most disturbing thing about H. R. 3190 as it is now written lies in its ambiguity. At first reading, the bill may appear understandable; but closer study will reveal that its far-reaching implications are intricate and incomprehensible. Even those who have constantly worked with the act and those who helped draft this bill are unable to explain the ultimate effect of these new proposals.

In studying this bill we have found many provisions which will cause hardships to some individuals. We would like to remedy all of these, but by attempting to acquaint the Congress with all of the details necessary for the appreciation of these individual cases, the

larger issues might become confused. Therefore, this report will be confined to our principal objections and suggestions.

First, interpretations of the Administrator and, in some cases, substantiating decisions by the courts have stretched the meaning of the terms "commerce" and "the production of goods for commerce" to fantastic extremes and have brought under coverage of the act the employees of many small establishments and industries whose products pass through four or five hands before entering the field of interstate commerce. The Administrator has by interpretation created a term "nonretail" which has reduced the exemption of the small retail and service stores. The law reports are full of court decisions upholding many of these far-reaching interpretations.

Much of the new language in this bill was included either to give the force of law to past interpretations of the Wage and Hour Administrator; to enact into statutory law those decisions of the Supreme Court upholding the Administrator's far-reaching edicts; and in some cases to nullify certain adverse decisions of the Supreme Court. It is impossible to have any concept of the purpose of the language of this bill except when it is viewed in the light of these past administrative interpretations and court decisions.

Second, we disagree with the contention of the majority that the bill will exempt small local retail and service establishments from coverage of the act. Viewed against the background of administrative interpretations and court decisions, this exemption is already quite narrow. The bill defines the terms "service" and "retail" so as to make even present narrow exemptions practically nonexistent.

An amendment clarifying these exemptions was adopted by the Education and Labor Committee when voting on the bill, section by section. However, when H. R. 3190 was later substituted for approval as a complete bill the amendment was rejected.

Our third major objection to the bill, as reported, is that it fixes a rigid minimum wage. We advocated a flexible minimum wage adjusted in ratio to changes in the cost of living. This adjustment would be made automatically. It would be announced by the Secretary of Labor on or before the 10th day of January of each year, and would be based on the most recent cost-of-living index of the Bureau of Labor Statistics. We also proposed that a floor be established below which the minimum could not be reduced regardless of how far the cost of living may decline.

A flexible minimum would have a twofold purpose: (1) It would enable workers to meet increasing living costs during periods of rising prices; (2) it would diminish the necessity for lay-offs, and thereby retard a spread of unemployment during periods when declining prices force employers to cut production costs.

Workers who cannot satisfy an employer that they are worth 75 cents per hour are frozen out of employment by this rigid minimum rate in cases of a recession or a need to reduce production costs in a declining economic cycle. The Fair Labor Standards Act does not guarantee that a worker can get a job at the minimum wage; nor does the proposed bill assure him that he can maintain his job when the rate is raised.

The rigid minimum wage of 75 cents per hour as provided in H. R. 3190 would remain fixed, regardless of economic conditions, unless Congress enacts legislation each time it is to be adjusted.

We of the minority hope that the Congress will consider favorably a flexible minimum wage rate.

After H. R. 3190 had been amended section by section by vote in the committee, the majority of the committee offered a substitute measure that was in reality H. R. 3190 with some majority amendments thereto. We were forced to vote on reporting the substituted H. R. 3190 with less than 1 hour for discussion and consideration. We take this opportunity to make our position clear. We favor the publicly announced purposes of this bill, but we cannot lend our support to the present language, which we believe goes far afield from those purposes and will cause many personal and economic injustices.

SAMUEL K. MCCONNELL, JR.
RALPH W. GWINN.
WINT SMITH.
CARROLL D. KEARNS.