

## EFFECTIVE DATE OF 1949 AMENDMENT

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

## TRANSFER OF FUNCTIONS

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

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

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

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

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

## DEFINITION OF “ADMINISTRATOR”

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

**§ 212. Child labor provisions****(a) Restrictions on shipment of goods; prosecution; conviction**

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

**(b) Investigations and inspections**

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

section 217 of this title to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor, and shall administer all other provisions of this chapter relating to oppressive child labor.

**(c) Oppressive child labor**

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

**(d) Proof of age**

In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age.

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

## AMENDMENTS

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

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

1949—Subsec. (a). Act Oct. 26, 1949, §10(a), struck out effective date at beginning of subsection and inserted proviso excepting good faith purchaser of goods produced by oppressive child labor.

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

## EFFECTIVE DATE OF 1974 AMENDMENT

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

## EFFECTIVE DATE OF 1961 AMENDMENT

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

## EFFECTIVE DATE OF 1949 AMENDMENT

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

## TRANSFER OF FUNCTIONS

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

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

**§ 213. Exemptions****(a) Minimum wage and maximum hour requirements**

The provisions of sections 206 (except subsection (d) in the case of paragraph (1) of this subsection) and 207 of this title shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel

or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of subchapter II of chapter 5 of title 5, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

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

(3) any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33½ per centum of its average receipts for the other six months of such year, except that the exemption from sections 206 and 207 of this title provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 206 of this title, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture; or

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

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

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than

an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock; or

(7) any employee to the extent that such employee is exempted by regulations, order, or certificate of the Secretary issued under section 214 of this title; or

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

(9) Repealed. Pub. L. 93-259, § 23(a)(1), Apr. 8, 1974, 88 Stat. 69.

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

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

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

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

(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary); or

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

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

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

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

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

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

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

**(b) Maximum hour requirements**

The provisions of section 207 of this title shall not apply with respect to—

- (1) any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of title 49; or
- (2) any employee of an employer engaged in the operation of a rail carrier subject to part A of subtitle IV of title 49; or
- (3) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act [45 U.S.C. 181 et seq.]; or
- (4) Repealed. Pub. L. 93-259, §11(c), Apr. 8, 1974, 88 Stat. 64.
- (5) any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or
- (6) any employee employed as a seaman; or
- (7) Repealed. Pub. L. 93-259, §21(b)(3), Apr. 8, 1974, 88 Stat. 68.
- (8) Repealed. Pub. L. 95-151, §14(b), Nov. 1, 1977, 91 Stat. 1252.
- (9) any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Office of Management and Budget, which has a total population in excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or
- (10)(A) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or
- (B) any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers; or
- (11) any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 207(a) of this title; or
- (12) any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water, at least 90 percent of which was ultimately delivered for agricultural purposes during the preceding calendar year; or
- (13) any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee (A) is primarily employed during his workweek in agriculture by such farmer, and (B) is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 206(a)(1) of this title; or
- (14) any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed in the establishment in such operations; or
- (15) any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup; or
- (16) any employee engaged (A) in the transportation and preparation for transportation of fruits or vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the same State, or (B) in transportation, whether or not performed by the farmer, between the farm and any point within the same State of persons employed or to be employed in the harvesting of fruits or vegetables; or
- (17) any driver employed by an employer engaged in the business of operating taxicabs; or
- (18), (19) Repealed. Pub. L. 93-259, §§15(c), 16(b), Apr. 8, 1974, 88 Stat. 65.
- (20) any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than 5 employees in fire protection or law enforcement activities, as the case may be; or
- (21) any employee who is employed in domestic service in a household and who resides in such household; or
- (22) Repealed. Pub. L. 95-151, §5, Nov. 1, 1977, 91 Stat. 1249.
- (23) Repealed. Pub. L. 93-259, §10(b)(3), Apr. 8, 1974, 88 Stat. 64.
- (24) any employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children—
  - (A) who are orphans or one of whose natural parents is deceased, or
  - (B) who are enrolled in such institution and reside in residential facilities of the institution,
 while such children are in residence at such institution, if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than \$10,000; or
- (25), (26) Repealed. Pub. L. 95-151, §§6(a), 7(a), Nov. 1, 1977, 91 Stat. 1249, 1250.

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

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

(29) any employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System if such employee (A) is an employee of a private entity engaged in providing services or facilities in a national park or national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture, and (B) receives compensation for employment in excess of fifty-six hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

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

**(c) Child labor requirements**

(1) Except as provided in paragraph (2) or (4), the provisions of section 212 of this title relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee—

(A) is less than twelve years of age and (i) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or (ii) is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are (because of subsection (a)(6)(A) of this section) required to be paid at the wage rate prescribed by section 206(a)(5)<sup>1</sup> of this title,

(B) is twelve years or thirteen years of age and (i) such employment is with the consent of his parent or person standing in the place of his parent, or (ii) his parent or such person is employed on the same farm as such employee, or

(C) is fourteen years of age or older.

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

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

(4)(A) An employer or group of employers may apply to the Secretary for a waiver of the appli-

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

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

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

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

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

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

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

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

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

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

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

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

(ii) that cannot be operated while being loaded.

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

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

(II) the scrap paper balers and paper box compactors meet an applicable standard that

<sup>1</sup> See References in Text note below.

is adopted by the American National Standards Institute after August 6, 1996, and that is certified by the Secretary to be at least as protective of the safety of minors as the standard described in subclause (I);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(III) the date of the incident;

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

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

(iv) The reports described in clause (i) shall be submitted to the Secretary promptly, but not

later than 10 days after the date on which an incident relating to an injury or death occurred.

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

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

(6) In the administration and enforcement of the child labor provisions of this chapter, employees who are under 17 years of age may not drive automobiles or trucks on public roadways. Employees who are 17 years of age may drive automobiles or trucks on public roadways only if—

(A) such driving is restricted to daylight hours;

(B) the employee holds a State license valid for the type of driving involved in the job performed and has no records of any moving violation at the time of hire;

(C) the employee has successfully completed a State approved driver education course;

(D) the automobile or truck is equipped with a seat belt for the driver and any passengers and the employee's employer has instructed the employee that the seat belts must be used when driving the automobile or truck;

(E) the automobile or truck does not exceed 6,000 pounds of gross vehicle weight;

(F) such driving does not involve—

(i) the towing of vehicles;

(ii) route deliveries or route sales;

(iii) the transportation for hire of property, goods, or passengers;

(iv) urgent, time-sensitive deliveries;

(v) more than two trips away from the primary place of employment in any single day for the purpose of delivering goods of the employee's employer to a customer (other than urgent, time-sensitive deliveries);

(vi) more than two trips away from the primary place of employment in any single day for the purpose of transporting passengers (other than employees of the employer);

(vii) transporting more than three passengers (including employees of the employer); or

(viii) driving beyond a 30 mile radius from the employee's place of employment; and

(G) such driving is only occasional and incidental to the employee's employment.

For purposes of subparagraph (G), the term "occasional and incidental" is no more than one-third of an employee's worktime in any workday and no more than 20 percent of an employee's worktime in any workweek.

(7)(A)(i) Subject to subparagraph (B), in the administration and enforcement of the child labor provisions of this chapter, it shall not be considered oppressive child labor for a new en-

trant into the workforce to be employed inside or outside places of business where machinery is used to process wood products.

(ii) In this paragraph, the term “new entrant into the workforce” means an individual who—

(I) is under the age of 18 and at least the age of 14, and

(II) by statute or judicial order is exempt from compulsory school attendance beyond the eighth grade.

(B) The employment of a new entrant into the workforce under subparagraph (A) shall be permitted—

(i) if the entrant is supervised by an adult relative of the entrant or is supervised by an adult member of the same religious sect or division as the entrant;

(ii) if the entrant does not operate or assist in the operation of power-driven woodworking machines;

(iii) if the entrant is protected from wood particles or other flying debris within the workplace by a barrier appropriate to the potential hazard of such wood particles or flying debris or by maintaining a sufficient distance from machinery in operation; and

(iv) if the entrant is required to use personal protective equipment to prevent exposure to excessive levels of noise and saw dust.

**(d) Delivery of newspapers and wreathmaking**

The provisions of sections 206, 207, and 212 of this title shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer or to any homemaker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

**(e) Maximum hour requirements and minimum wage employees**

The provisions of section 207 of this title shall not apply with respect to employees for whom the Secretary of Labor is authorized to establish minimum wage rates as provided in section 206(a)(3)<sup>1</sup> of this title, except with respect to employees for whom such rates are in effect; and with respect to such employees the Secretary may make rules and regulations providing reasonable limitations and allowing reasonable variations, tolerances, and exemptions to and from any or all of the provisions of section 207 of this title if he shall find, after a public hearing on the matter, and taking into account the factors set forth in section 206(a)(3)<sup>1</sup> of this title, that economic conditions warrant such action.

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

The provisions of sections 206, 207, 211, and 212 of this title shall not apply with respect to any employee whose services during the workweek are performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: a State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat.

462) [43 U.S.C. 1331 et seq.]; American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

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

The exemption from section 206 of this title provided by paragraph (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds \$10,000,000 (exclusive of excise taxes at the retail level which are separately stated).

**(h) Maximum hour requirement: fourteen workweek limitation**

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year to any employee who—

(1) is employed by such employer—

(A) exclusively to provide services necessary and incidental to the ginning of cotton in an establishment primarily engaged in the ginning of cotton;

(B) exclusively to provide services necessary and incidental to the receiving, handling, and storing of raw cotton and the compressing of raw cotton when performed at a cotton warehouse or compress-warehouse facility, other than one operated in conjunction with a cotton mill, primarily engaged in storing and compressing;

(C) exclusively to provide services necessary and incidental to the receiving, handling, storing, and processing of cottonseed in an establishment primarily engaged in the receiving, handling, storing, and processing of cottonseed; or

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

(2) receives for—

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

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

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

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

**(i) Cotton ginning**

The provisions of section 207 of this title shall not apply for a period or periods of not more

than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who—

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

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

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

(B) in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

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

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

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

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

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

(B) in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

(June 25, 1938, ch. 676, §13, 52 Stat. 1067; Aug. 9, 1939, ch. 605, 53 Stat. 1266; Oct. 26, 1949, ch. 736, §11, 63 Stat. 917; Aug. 8, 1956, ch. 1035, §3, 70 Stat. 1118; Pub. L. 85-231, §1(1), Aug. 30, 1957, 71 Stat. 514; Pub. L. 86-624, §21(b), July 12, 1960, 74 Stat. 417; Pub. L. 87-30, §§9, 10, May 5, 1961, 75 Stat. 71, 74; Pub. L. 89-601, title II, §§201-204(a), (b), 205-212(a), 213, 214, 215(b), (c), Sept. 23, 1966, 80 Stat. 833-838; Pub. L. 89-670, §8(e), Oct. 15, 1966, 80 Stat. 943; 1970 Reorg. Plan No. 2, §102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Pub. L. 92-318, title IX, §906(b)(1), June 23, 1972, 86 Stat. 375; Pub. L. 93-259, §§6(c)(2), 7(b)(3), (4), 8, 9(b), 10, 11, 12(a), 13(a)-(d), 14-18, 20(a)-(c), 21(b), 22, 23, 25(b), Apr. 8, 1974, 88 Stat. 61-69, 72; Pub. L. 95-151, §§4-8, 9(d), 11, 14, Nov. 1, 1977, 91 Stat. 1249, 1250-1252; Pub. L. 96-70, title I, §1225(a), Sept. 27, 1979, 93 Stat. 468; Pub. L. 101-157, §3(c), Nov. 17, 1989, 103 Stat. 939; Pub. L. 103-329, title VI, §633(d), Sept. 30, 1994, 108 Stat. 2428; Pub. L. 104-88, title III, §340, Dec. 29, 1995, 109 Stat. 955; Pub. L. 104-174, §1, Aug. 6, 1996, 110 Stat. 1553; Pub. L. 104-188, [title II], §2105(a), Aug. 20, 1996, 110 Stat. 1929; Pub. L. 105-78, title I, §105, Nov. 13, 1997, 111 Stat. 1477; Pub. L. 105-334, §2(a), Oct. 31, 1998, 112 Stat. 3137; Pub. L. 108-199, div. E, title I, §108, Jan. 23, 2004, 118 Stat. 236.)

REFERENCES IN TEXT

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

Section 206(a)(5) of this title, referred to in subsec. (c)(1)(A), was redesignated section 206(a)(4) of this title by Pub. L. 110-28, title VIII, §8103(c)(1)(B), May 25, 2007, 121 Stat. 189.

Section 206(a)(3) of this title, referred to in subsec. (e), was repealed and section 206(a)(4) of this title was redesignated section 206(a)(3) by Pub. L. 110-28, title VIII, §8103(c)(1)(B), May 25, 2007, 121 Stat. 189.

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

CODIFICATION

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

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

AMENDMENTS

2004—Subsec. (c)(7), Pub. L. 108-199 added par. (7).

1998—Subsec. (c)(6), Pub. L. 105-334 added par. (6).

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

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

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

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

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

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

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

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

Subsec. (g), Pub. L. 101-157, §3(c)(2), substituted “provided by paragraph (6) of subsection (a) of this section” for “provided by paragraphs (2) and (6) of subsection (a) of this section” and struck out before period at end “, except that the exemption from section 206 of this title provided by paragraph (2) of subsection (a) of this section shall apply with respect to any establishment described in this subsection which has an annual dollar volume of sales which would permit it to qualify for the exemption provided in paragraph (2) of subsection (a) of this section if it were in an enterprise described in section 203(s) of this title”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (a)(11). Pub. L. 93-259, §10(a), repealed exemption provision respecting any employee or proprietor in a retail or service establishment which qualifies as an exempt retail or service establishment under former par. (2) of subsec. (a) with respect to whom provisions of sections 206 and 207 of this title would not otherwise apply, engaged in handling telegraphic messages for public under an agency or contract arrangement with a telegraph company where telegraph message revenue of such agency does not exceed \$500 a month.

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

Subsec. (a)(14). Pub. L. 93-259, §9(b)(1), repealed exemption provision respecting any agricultural employee employed in the growing and harvesting of shade-grown tobacco who is engaged in processing (including, but not limited to, drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling) of such tobacco, prior to the stemming process, for use as cigar wrapper tobacco. See subsec. (b)(22) of this section.

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

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

Subsec. (b)(4). Pub. L. 93-259, §11(a), effective May 1, 1974, inserted “who is” after “employee” and “, and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which

he is employed” before the semi-colon. Pub. L. 93-259, §11(b), substituted “forty-four hours” for “forty-eight hours” effective one year after May 1, 1974. Pub. L. 93-259, §11(c), repealed subsec. (b)(4) effective two years after May 1, 1974.

Subsec. (b)(7). Pub. L. 93-259, §21(b)(1), substituted “(regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), if such employee receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed” for “, if the rates and services of such railway or carrier are subject to regulation by a State or local agency” effective May 1, 1974. Pub. L. 93-259, §21(b)(2), substituted “forty-four hours” for “forty-eight hours” effective one year after May 1, 1974. Pub. L. 93-259, §21(b)(3) repealed subsec. (b)(7) effective two years after May 1, 1974.

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

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

Subsec. (b)(15). Pub. L. 93-259, §20(a), struck out exemption provision respecting any employee engaged in ginning of cotton for market, in any place of employment located in a county where cotton is grown in commercial quantities or in the processing of sugar beets, sugar-beet molasses, and sugarcane into sugar. See subsec. (b)(25) and (26) of this section.

Subsec. (b)(18). Pub. L. 93-259, §15(a), effective May 1, 1974, inserted “and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed.” Pub. L. 93-259, §15(b), effective one year after May 1, 1974, substituted “forty-four hours” for “forty-eight hours.” Pub. L. 93-259, §15(c), repealed par. (18) effective two years after May 1, 1974.

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

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

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

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

Subsec. (b)(23). Pub. L. 93-259, §10(b)(1), added par. (23), effective May 1, 1974. Pub. L. 93-259, §10(b)(2), sub-



stituted "forty-four hours" for "forty-eight hours" effective one year after May 1, 1974. Pub. L. 93-259, §10(b)(3), repealed par. (23) effective two years after May 1, 1974.

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

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

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

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

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

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

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

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

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

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

Subsec. (a)(2). Pub. L. 89-601, §201(a), revised the retail or service establishment exemption so as to exempt employees of a retail or service establishment (other than an establishment or employee engaged in laundering or drycleaning or an establishment engaged in the operation of a hospital, school, or institution specifically included in the definition of the term "enterprise engaged in commerce or in the production of goods for commerce") if more than 50 per centum of the establishment's annual dollar volume of sales of goods or services is made within the state in which the establishment is located and the establishment is not an enterprise described in section 203(s) of this title or the establishment has an annual dollar volume of sales which is less than \$250,000.

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

Subsec. (a)(6). Pub. L. 89-601, §203(a), limited the provisions exempting agricultural employees from application of sections 206 and 207 of this title by narrowing the class of exempted agricultural employees to include only an employee employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricul-

tural labor, an employee who is the spouse, parent, child, or other member of his employer's immediate family, certain hand harvest laborers, or an employee principally engaged in the range production of livestock. See subsec. (b)(12) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

hospital primarily engaged in the care of the sick, the aged, or the mentally ill or defective residing on the premises.

Subsec. (b)(10). Pub. L. 89-601, §§209(b), 212(a), repealed par. (10) which granted an unlimited overtime exemption relating to petroleum distribution employees and enacted a new par. (10) relating to salesmen, partsmen, or mechanics primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers. See subsec. (b)(3) of this section.

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

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

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

1961—Subsec. (a)(1). Pub. L. 87-30, §9, substituted “any employee employed in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to, the provisions of the Administrative Procedure Act” and exception provision for “any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator)”.

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

Subsec. (a)(5). Pub. L. 87-30, §9, inserted “propagating” and “or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations” after “taking” and “life”, respectively, and substituted “loading and unloading when performed by any such employee” for “including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing (other than canning), marketing, freezing, curing, storing, or distributing the above products or byproducts thereof”. See subsec. (b)(4) of this section.

Subsec. (a)(7). Pub. L. 87-30, §9, substituted “Secretary” for “Administrator”.

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

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

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

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

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

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

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

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

Subsec. (d). Pub. L. 87-30, §10, extended the nonapplicability of sections 206, 207, and 212 of this title to any

homeworker engaged in the making of evergreen wreaths.

1960—Subsec. (f). Pub. L. 86-624 struck out “Alaska, Hawaii;” before “Puerto Rico”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-334, §2(b), Oct. 31, 1998, 112 Stat. 3138, provided that:

“(1) IN GENERAL.—This Act [amending this section and enacting provisions set out as a note under section 201 of this title] shall become effective on the date of the enactment of this Act [Oct. 31, 1998].

“(2) EXCEPTION.—The amendment made by subsection (a) [amending this section] defining the term ‘occasional and incidental’ shall also apply to any case, action, citation, or appeal pending on the date of the enactment of this Act unless such case, action, citation, or appeal involves property damage or personal injury.”

#### EFFECTIVE DATE OF 1995 AMENDMENT

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

#### EFFECTIVE DATE OF 1994 AMENDMENT

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

#### EFFECTIVE DATE OF 1989 AMENDMENT

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

## EFFECTIVE DATE OF 1979 AMENDMENT

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

## EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-151, §14(a), (b), Nov. 1, 1977, 91 Stat. 1252, provided that the amendments made by subsecs. (a) and (b) of section 14 are effective Jan. 1, 1978, and Jan. 1, 1979, respectively.

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

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

## EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-259, §6(c)(2)(B), Apr. 8, 1974, 88 Stat. 61, provided that the amendment made by section 6(c)(2)(B) is effective Jan. 1, 1975.

Pub. L. 93-259, §8(a)-(c), Apr. 8, 1974, 88 Stat. 62, provided that the amendments made by subsecs. (a), (b), and (c) of section 8 are effective Jan. 1, 1975, 1976, and 1977, respectively.

Pub. L. 93-259, §10(b)(2), (3), Apr. 8, 1974, 88 Stat. 63, 64, provided that the amendment and repeal made by pars. (2) and (3) of section 10(b) are effective one year and two years after May 1, 1974, respectively.

Pub. L. 93-259, §11(b), (c), Apr. 8, 1974, 88 Stat. 64, provided that the amendment and repeal made by subsecs. (b) and (c) of section 11 are effective one year and two years after May 1, 1974, respectively.

Pub. L. 93-259, §13(b)-(d), Apr. 8, 1974, 88 Stat. 64, provided that the amendments made by subsecs. (b), (c), and (d) of section 13 are effective one year, two years, and three years after May 1, 1974, respectively.

Pub. L. 93-259, §15(b), (c), Apr. 8, 1974, 88 Stat. 65, provided that the amendment and repeal made by subsecs. (b) and (c) of section 15 are effective one year and two years after May 1, 1974, respectively.

Pub. L. 93-259, §16(a), (b), Apr. 8, 1974, 88 Stat. 65, provided that the amendment and repeal made by subsecs. (a) and (b) of section 16 are effective one year and two years after May 1, 1974, respectively.

Pub. L. 93-259, §20(b)(2), (3), Apr. 8, 1974, 88 Stat. 67, provided that the amendments made by pars. (2) and (3) of section 20(b) are effective Jan. 1, 1975, and 1976, respectively.

Pub. L. 93-259, §20(c)(2), (3), Apr. 8, 1974, 88 Stat. 67, 68, provided that the amendments made by pars. (2) and (3) of section 20(c) are effective Jan. 1, 1975, and 1976, respectively.

Pub. L. 93-259, §21(b)(2), (3), Apr. 8, 1974, 88 Stat. 68, provided that the amendment and repeal made by pars. (2) and (3) of section 21(b) are effective one year and two years after May 1, 1974, respectively.

Amendment by sections 6(c)(2)(A), 7(b)(3), (4), 9(b), 10(a), (b)(1), 11(a), 12(a), 13(a), 14, 15(a), 17, 18, 20(a), (b)(1), (c)(1), 21(b)(1), 22, 23, and 25(b) of Pub. L. 93-259 effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as a note under section 202 of this title.

## EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment by Pub. L. 89-670 effective Apr. 1, 1967, as prescribed by President and published in Federal Register, see section 16(a), formerly §15(a), of Pub. L. 89-670 and Ex. Ord. No. 11340, Mar. 30, 1967, 32 F.R. 5453.

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

## EFFECTIVE DATE OF 1961 AMENDMENT

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

## EFFECTIVE DATE OF 1957 AMENDMENT

Pub. L. 85-231, §2, Aug. 30, 1957, 71 Stat. 514, provided that: "The amendments made by this Act [amending this section and sections 216 and 217 of this title] shall take effect upon the expiration of ninety days from the date of its enactment [Aug. 30, 1957]."

## EFFECTIVE DATE OF 1949 AMENDMENT

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

## TRANSFER OF FUNCTIONS

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

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

## EXEMPTIONS FOR APPRENTICES AND STUDENT LEARNERS

Pub. L. 104-174, §3, Aug. 6, 1996, 110 Stat. 1555, provided that: "Section 1 [amending this section] shall not be construed as affecting the exemption for apprentices and student learners published in section 570.63 of title 29, Code of Federal Regulations."

## REGULATIONS CONCERNING COMPUTER, SOFTWARE, AND OTHER SIMILARLY SKILLED PROFESSIONALS

Pub. L. 101-583, §2, Nov. 15, 1990, 104 Stat. 2871, provided that: "Not later than 90 days after the date of enactment of this Act [Nov. 15, 1990], the Secretary of Labor shall promulgate regulations that permit computer systems analysts, computer programmers, software engineers, and other similarly skilled professional workers as defined in such regulations to qualify as exempt executive, administrative, or professional employees under section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)). Such regulations shall provide that if such employees are paid on an hourly basis they shall be exempt only if their hourly rate of pay is at least 6½ times greater than the applicable minimum wage rate under section 6 of such Act (29 U.S.C. 206)."

## PUBLIC AGENCY EMPLOYEES IN FIRE PROTECTION AND LAW ENFORCEMENT ACTIVITIES; STUDIES IN 1976 OF 1975 TOURS OF DUTY

Pub. L. 93-259, §6(c)(3), Apr. 8, 1974, 88 Stat. 61, authorized Secretary of Labor to conduct a study in 1976 of average number of hours in tours of duty in work periods in 1975 of certain employees of public agencies employed in fire protection and law enforcement activities, and publish results of such studies in Federal Register.

## PIPELINE EMPLOYEES UNDER SUBSEC. (b)(2)

Pub. L. 93-259, §23(c), Apr. 8, 1974, 88 Stat. 69, provided in part for amendment of subsec. (b)(2) of this section "insofar as it relates to pipeline employees".

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

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89-601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89-601, see section 602

of Pub. L. 89-601, set out as a note under section 203 of this title.

**STUDY OF AGRICULTURAL HANDLING AND PROCESSING EXEMPTIONS AND RATES OF PAY IN EXEMPT FOOD SERVICE ENTERPRISES**

Pub. L. 87-30, §13, May 5, 1961, 75 Stat. 75, directed Secretary of Labor to study complicated system of exemptions available for handling and processing agricultural products under this chapter and complex problems involving rates of pay of certain employees exempted from provisions of this chapter, and submit results of his studies along with his recommendations for proposed legislation to second session of Eighty-seventh Congress.

**TRANSPORTATION OF MIGRANT FARM WORKERS**

Act Aug. 3, 1956, ch. 905, §3, 70 Stat. 958, provided that: "Section 13(b)(1) of the Fair Labor Standards Act, as amended [subsec. (b)(1) of this section] shall not apply in the case of any employee with respect to whom the Interstate Commerce Commission [now Secretary of Transportation] has power to establish qualifications and maximum hours of service solely by virtue of section 204(a)(3a) of the Interstate Commerce Act [now 49 U.S.C. 31502]."

**§ 214. Employment under special certificates**

**(a) Learners, apprentices, messengers**

The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 206 of this title and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.

**(b) Students**

(1)(A) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less than \$1.60 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

(B) Except as provided in paragraph (4)(B), during any month in which full-time students are to be employed in any retail or service establishment under certificates issued under this subsection the proportion of student hours of employment to the total hours of employment of all employees in such establishment may not exceed—

(i) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) were covered by this chapter before the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period,

(II) the maximum proportion for any corresponding month of student hours of employment to the total hours of employment of all employees in such establishment applicable to the issuance of certificates under this section at any time before the effective date of the Fair Labor Standards Amendments of 1974 for the employment of students by such employer, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater;

(ii) in the case of retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered for the first time on or after the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of hours of employment of students in such establishment to the total hours of employment of all employees in such establishment for the corresponding month of the twelve-month period immediately prior to the effective date of such Amendments,

(II) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater; or

(iii) in the case of a retail or service establishment for which records of student hours worked are not available, the proportion of student hours of employment to the total hours of employment of all employees based on the practice during the immediately preceding twelve-month period in (I) similar establishments of the same employer in the same general metropolitan area in which such establishment is located, (II) similar establishments of the same or nearby communities if such establishment is not in a metropolitan area, or (III) other establishments of the same general character operating in the community or the nearest comparable community.

For purpose of clauses (i), (ii), and (iii) of this subparagraph, the term "student hours of employment" means hours during which students are employed in a retail or service establishment under certificates issued under this subsection.

(2) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(a)(5)<sup>1</sup> of this title or not less than \$1.30 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture.

(3) The Secretary, to the extent necessary in order to prevent curtailment of opportunities

<sup>1</sup> See References in Text note below.