note set out under section 201 of this title] shall take effect on May 1, 1974.''

EFFECTIVE DATE OF 1949 AMENDMENT

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

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

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

§ 203. Definitions

As used in this chapter—

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

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

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

(d) ''Employer'' includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(e)(1) Except as provided in paragraphs (2), (3), and (4), the term ''employee'' means any individual employed by an employer.

(2) In the case of an individual employed by a public agency, such term means—

(A) any individual employed by the Government of the United States—

(i) as a civilian in the military departments (as defined in section 102 of title 5),

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

(iii) in any unit of the judicial branch of the Government which has positions in the competitive service,

(iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,

(v) in the Library of Congress, or

(vi) the[1] Government Printing Office;

(B) any individual employed by the United States Postal Service or the Postal Rate Commission; and

(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and

(ii) who—

(I) holds a public elective office of that State, political subdivision, or agency,

(II) is selected by the holder of such an office to be a member of his personal staff,

(III) is appointed by such an officeholder to serve on a policymaking level,

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

(V) is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

(3) For purposes of subsection (u) of this section, such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.

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

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

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

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

(5) The term ''employee'' does not include individuals who volunteer their services solely for humanitarian purposes to private non-profit food banks and who receive from the food banks groceries.

(f) ''Agriculture'' includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j(g) of title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

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

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

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

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

(j) ''Produced'' means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.

(k) ''Sale'' or ''sell'' includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(*l*) ''Oppressive child labor'' means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child-labor age. The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

(m) ''Wage'' paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging or other facilities are customarily furnished by such employer to his employees: *Provided*, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further*, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage an employer is required to pay a tipped employee, the amount paid such employee by the employee's employer shall be an amount equal to—

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

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

The additional amount on account of tips may not exceed the value of the tips actually received by an employee. The preceding 2 sentences shall not apply with respect to any tipped employee unless such employee has been informed by the employer of the provisions of this subsection, and all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

(n) ''Resale'' shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: *Provided*, That the sale is recognized as a bona fide retail sale in the industry.

(*o*) Hours Worked.—In determining for the purposes of sections 206 and 207 of this title the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.

(p) ''American vessel'' includes any vessel which is documented or numbered under the laws of the United States.

(q) ''Secretary'' means the Secretary of Labor.

(r)(1) ''Enterprise'' means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor. Within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement, (A) that it will sell, or

sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (B) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (C) that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments.

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

(A) in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is operated for profit or not for profit), or

(B) in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), or

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

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

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

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

(ii) is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);

(B) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

(C) is an activity of a public agency.

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

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

(u) ''Man-day'' means any day during which an employee performs any agricultural labor for not less than one hour.

(v) ''Elementary school'' means a day or residential school which provides elementary education, as determined under State law.

(w) ''Secondary school'' means a day or residential school which provides secondary education, as determined under State law.

(x) ''Public agency'' means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Rate Commission), a State, or a political subdivision of a State; or any interstate governmental agency.

(y) ''Employee in fire protection activities'' means an employee, including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker, who—

(1) is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by a fire department of a municipality, county, fire district, or State; and

(2) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

(June 25, 1938, ch. 676, § 3, 52 Stat. 1060; 1946 Reorg. Plan No. 2, § 1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Oct. 26, 1949, ch. 736, § 3, 63 Stat. 911; Pub. L. 87–30, § 2, May 5, 1961, 75 Stat. 65; Pub. L. 89–601, title I, §§ 101–103, title II, § 215(a), Sept. 23, 1966, 80 Stat. 830–832, 837; Pub. L. 92–318, title IX, § 906(b)(2), (3), June 23, 1972, 86 Stat. 375; Pub. L. 93–259, §§ 6(a), 13(e), Apr. 8, 1974, 88 Stat. 58, 64; Pub. L. 95–151, §§ 3(a), (b), 9(a)–(c), Nov. 1, 1977, 91 Stat. 1249, 1251; Pub. L. 99–150, §§ 4(a), 5, Nov. 13, 1985, 99 Stat. 790; Pub. L. 101–157, §§ 3(a), (d), 5, Nov. 17, 1989, 103 Stat. 938, 939, 941; Pub. L. 104–1, title II, § 203(d), Jan. 23, 1995, 109 Stat. 10; Pub. L. 104–188, [title II], § 2105(b), Aug. 20, 1996, 110 Stat. 1929; Pub. L. 105–221, § 2, Aug. 7, 1998, 112 Stat. 1248; Pub. L. 106–151, § 1, Dec. 9, 1999, 113 Stat. 1731.)

AMENDMENTS

1999—Subsec. (y). Pub. L. 106–151 added subsec. (y).

1998—Subsec. (e)(5). Pub. L. 105–221 added par. (5).

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

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

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

The additional amount on account of tips may not exceed the value of the tips actually received by an em-

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

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

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

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

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

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

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

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

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

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

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

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

1974—Subsec. (d). Pub. L. 93–259, §6(a)(1), redefined ''employer'' to include a public agency and struck out text which excluded from such term the United States or any State or political subdivision of a State (except with respect to employees of a State, or a political subdivision thereof, employed (1) in a hospital, institution, or school referred to in last sentence of subsec. (r) of this section, or (2) in the operation of a railway or carrier referred to in such sentence).

Subsec. (e). Pub. L. 93–259, §6(a)(2), in revising definition of ''employee'', incorporated existing introductory text in provisions designated as par. (1), inserting exception provision; added par. (2); incorporated existing cl. (1) in provisions designated as par. (3); and struck out former cl. (2) excepting from ''employee'', ''any individual who is employed by an employer engaged in agriculture if such individual (A) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (B) commutes daily from his permanent residence to the farm on which he is so employed, and (C) has been engaged in agriculture less than thirteen weeks during the preceding calendar year''.

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

Subsec. (m). Pub. L. 93–259, §13(e), substituted in provision respecting wage of tipped employee ''the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee'' for ''in the case of an employee who (either himself or acting through his representative) shows to the satisfaction of the Secretary that the actual amount of tips received by him was less than the amount determined by the employer as the amount by which the wage paid him was deemed to be increased under this sentence, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount'' and inserted ''The previous sentence shall not apply with respect to any tipped employee unless (1) such employee has been informed by the employer of the provisions of this subsection, and (2) all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.''

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

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

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

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

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

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

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

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

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

Subsec. (s). Pub. L. 89–601, §102(c), removed gross annual business level tests of $1,000,000 for retail and serv-

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

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

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

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

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

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

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

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

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

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

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

CONSTRUCTION OF 1999 AMENDMENT

Pub. L. 106–151, § 2, Dec. 9, 1999, 113 Stat. 1731, provided that: ''The amendment made by section 1 [amending this section] shall not be construed to reduce or substitute for compensation standards: (1) contained in any existing or future agreement or memorandum of understanding reached through collective bargaining by a bona fide representative of employees in accordance with the laws of a State or political subdivision of a State; and (2) which result in compensation greater than the compensation available to employees under the overtime exemption under section 7(k) of the Fair Labor Standards Act of 1938 [29 U.S.C. 207(k)].''

EFFECTIVE DATE OF 1989 AMENDMENT

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

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

EFFECTIVE DATE OF 1985 AMENDMENT; PROMULGATION OF REGULATIONS

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

EFFECTIVE DATE OF 1977 AMENDMENT

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

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

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

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

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

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

EFFECTIVE DATE OF 1974 AMENDMENT

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

EFFECTIVE DATE OF 1966 AMENDMENT

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

EFFECTIVE DATE OF 1961 AMENDMENT

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

EFFECTIVE DATE OF 1949 AMENDMENT

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

TRANSFER OF FUNCTIONS

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

PRESERVATION OF COVERAGE

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

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

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

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

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

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

VOLUNTEERS; PROMULGATION OF REGULATIONS

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

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

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

STATUS OF BAGGERS AT COMMISSARY OF MILITARY DEPARTMENT

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

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

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

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

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

SECTION REFERRED TO IN OTHER SECTIONS

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

§ 204. Administration

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

There is created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division (in this chapter referred to as the ''Administrator''). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate.

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

The Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary to carry out his functions and duties under this chapter and shall fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of title 5. The Administrator may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Administrator in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the Administrator, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(c) Principal office of Administrator; jurisdiction

The principal office of the Administrator shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place.

(d) Biennial report to Congress; studies of exemptions to hour and wage provisions and means to prevent curtailment of employment opportunities

(1) The Secretary shall submit biennially in January a report to the Congress covering his activities for the preceding two years and including such information, data, and recommendations for further legislation in connection with the matters covered by this chapter as he may find advisable. Such report shall contain an evaluation and appraisal by the Secretary of the minimum wages and overtime coverage established by this chapter, together with his recommendations to the Congress. In making such evaluation and appraisal, the Secretary shall take into consideration any changes which may have occurred in the cost of living and in productivity and the level of wages in manufacturing, the ability of employers to absorb wage increases, and such other factors as he may deem pertinent. Such report shall also include a summary of the special certificates issued under section 214(b) of this title.

(2) The Secretary shall conduct studies on the justification or lack thereof for each of the special exemptions set forth in section 213 of this title, and the extent to which such exemptions apply to employees of establishments described in subsection (g) of such section and the economic effects of the application of such exemptions to such employees. The Secretary shall submit a report of his findings and recommendations to the Congress with respect to the studies conducted under this paragraph not later than January 1, 1976.