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to those vessels which are “documented” or “numbered” as described above in §§ 783.40 and 783.41. Since the term “American vessel” has traditionally been applied to regularly documented vessels (see *U.S. v. Rogers*, 27 Fed. Cas. 890; *Badger v. Entierrez*, 111 U.S. 734; 18 Op. A.G. 234 (1885); 48 Am. Jur. 40), the inclusion of numbered vessels in the statutory definition of “American vessel” would indicate that the work “includes” is used in the sense of “embracing”, as an enlargement and not as a word of limitation. The term may therefore apply to other vessels that do not fall within the illustrations given. For example, neither the documenting laws nor the numbering laws apply to vessels plying the purely internal waters of a State which do not join up with navigable waters touching on another State (19 CFR 3.5(a)(4); 33 CFR 2.10-5), but, nevertheless, the Fair Labor Standards Act does apply in those areas and it clearly would not comport with the remedial purpose of the Act to exclude from its minimum wage provisions seamen engaged in commerce or in the production of goods for commerce in those areas though the vessels are not documented or numbered. On the contrary, the legislative history shows the affirmative purpose to improve, though to a limited extent, the status of seamen (Sen. Rep. No. 145, 87th Cong., 1st sess., p. 32, 50).

COMPUTATION OF WAGES AND HOURS

§ 783.43 Computation of seaman's minimum wage.

Section 6(b) requires, under paragraph (2) of the subsection, that an employee employed as a seaman on an American vessel be paid wages at not less than the rate which will provide to the employee, for the period covered by the wage payment, wages which are equal to compensation for all hours on duty in such period at the hourly rate prescribed for employees newly covered by the Act's minimum wage requirements by reason of the 1961 Amendments (see §§ 783.23 and 783.26). Although the Act takes the workweek as the unit of time to be used in determining compliance with the minimum wage of overtime requirements and in applying the exemptions, Congress, in

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recognition of the unique working conditions of seamen and of the customs in the industry, made this special provision. Under section 6(b)(2) periods other than a workweek may be used, in accordance with established customs in the industry, as the basis for calculating wages for covered seamen provided the wages equal the compensation at the applicable minimum hourly rate which would be due to the employee for his hours actually spent on duty in the period. This would mean that the wage period may properly cover, for example, the period of a month or of a voyage so long as the seaman receives at the appropriate time compensation at least equal to the prescribed minimum rate for each compensable hour in that pay period. (See also § 531.26 of this chapter concerning requirements of other laws governing calculation of wages and frequency and manner of payment.) To illustrate, where seamen have customarily been paid monthly under an arrangement to perform seamen's duties during stipulated periods and to be off duty during stipulated periods during the month, if such a seaman works 300 hours during the month and receives his monthly compensation in an amount equal to a payment for that number of hours at the applicable minimum rate, there would be compliance with the requirements of section 6(b)(2). The fact that this seaman works a varying number of hours during the weeks comprising the monthly period or that the monthly compensation is disbursed in two or four partial payments to the seaman during the month would not warrant a contrary conclusion.

§ 783.44 Board and lodging as wages.

The wages for the period covered by the wage payment include all remuneration for employment paid to or on behalf of the employee for all hours actually on duty intended to be compensated by such wage payment. The reasonable cost or fair value, as determined by the Secretary of Labor pursuant to section 3(m) of the Act, of board and lodging furnished the employee during such period, if customarily furnished by the employer to his employees, is also included as part of the

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wages for the actual hours worked in the period (see §783.16). However, the cost of board and lodging would not be included as part of the wages paid to the employee to the extent it is excluded from the employee's wages under terms of a bona fide collective bargaining agreement applicable to such employee, whether or not customarily furnished to the employee. Where such an exclusion is not provided for in any bona fide collective bargaining agreement applicable to the employee, the reasonable cost or fair value thereof, whichever is appropriate, as determined in accordance with the standards set forth in the regulations in part 531 of this chapter, is included as part of the wage paid to such employee. Part 531 of this chapter also contains the official regulations and interpretations of the Department of Labor concerning the application of section 3(m) to other facilities as well as board and lodging furnished to an employee.

§ 783.45 Deductions from wages.

Where deductions are made from the wages of a seaman subject to section 6(b) of the Act, consideration must be given as to whether or not such deductions are permitted to be made when they result in the seaman receiving cash wages which are less than the applicable minimum wage rate for each hour actually on duty during the period covered by the wage payments. Such considerations are to be based upon the principles and interpretations governing such deductions. These are set forth and discussed in part 531 of this chapter. The methods of paying the compensation required by section 6 and the application thereto of the provisions of section 3(m) of the Act, which are set forth and explained in the said part 531, are applicable to seamen subject to the minimum wage provisions of the Act.

§ 783.46 Hours worked.

The provisions of section 6(b)(2) of the Act require that a seaman employed on an American vessel be paid wages equal to compensation at not less than the prescribed minimum wage rate for all of the hours the employee "was actually on duty (including periods aboard ship when the employee was

on watch or was, at the direction of a superior officer, performing work or standing by, but not including off-duty periods which are provided pursuant to the employment agreement)". The Act in this portion of section 6(b)(2) is reflecting concepts that are well established in the law, and existing precedents (in such cases as *Armour & Co. v. Wantock*, 323 U.S. 126; *Skidmore v. Swift & Co.*, 323 U.S. 134; *Steiner v. Mitchell*, 350 U.S. 247; *Mitchell v. King Packing Co.*, 350 U.S. 260; *Tennessee Coal, Iron & R. Co. v. Muscoda Local N. 123*, 321 U.S. 590; and *General Electric Co. v. Porter*, 208 F. 2d 805, certiorari denied, 347 U.S. 951, 975) would be applicable in determining what time constitutes hours worked. See also the general discussion of hours worked in part 785 of this chapter.

§ 783.47 Off-duty periods.

Off-duty periods include not only such periods as shore leave but also generally those hours spent by a seaman on the vessel outside his watch or normal or regular working hours and his standby periods during which hours he is not required to perform and does not perform work of any kind but is free to utilize his time for his own purpose. The fact that during such off-duty periods the employee is subject to call in case of emergency situations affecting the safety and welfare of the vessel upon which he is employed, or of its passengers, crew, or cargo or for participation in life boat or fire drills will not render such off-duty periods, excluded by employment agreement applicable to the employee, "hours worked". Responding to such calls, however, as well as the performance of work in response thereto constitute compensable work time. For further and more detailed discussion on what generally are regarded as "hours worked" under the Act, see part 785 of this chapter.

APPLICATION OF THE EXEMPTIONS

§ 783.48 Factors determining application of exemptions.

The application of the exemptions provided by section 13(a)(14) and section 13(b)(6) of the Act is determined in accordance with their language and