

# FEDERAL REGISTER

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## TITLE 7—AGRICULTURE

### Chapter VII—Production and Marketing Administration (Agricultural Adjustment), Department of Agriculture

[ACP-1950-P. R. 1]

#### PART 702—SPECIAL AGRICULTURAL CONSERVATION PROGRAM

##### SUBPART—1950—PUERTO RICO MISCELLANEOUS AMENDMENTS

Pursuant to the authority vested in the Secretary of Agriculture under sections 7-17, inclusive, of the Soil Conservation and Domestic Allotment Act, as amended, the 1950 Special Agricultural Conservation Program for Puerto Rico, issued December 28, 1949 (14 F. R. 7870), is amended as follows:

1. Section 702.3 is added as follows:

§ 702.3 *Allocation.* The amount of funds allocated to Puerto Rico is \$997,000. This amount does not include the amount set aside for administrative expenses and the amount required for size-of-payment adjustments in § 702.42.

2. In § 702.21, the title is amended to read as follows:

§ 702.21 *Practice 11: Establishing an adequate system of ditches to carry surface run-off water on land of 10 percent or more slope planted to intertilled crops, except sugarcane.*

3. In § 702.28 *Practice 18: Planting vegetative barriers on land of 10 percent or more slope*, paragraph (a) is amended by changing the reference to § 702.17 therein to § 702.27.

4. In § 702.29 *Practice 19: Constructing protected outlet channels for carrying run-off water from ditches and terrace systems*, is amended by changing the reference to § 702.17 in the fourth sentence to § 702.27.

5. Section 702.52 is amended to read as follows:

§ 702.52 *Practices carried out with State or Federal aid.* The extent of any practice shall not be reduced because it is carried out with materials or services furnished by the Agricultural Conservation Programs Branch, Production and Marketing Administration, or by any agency of Puerto Rico to another agency

of Puerto Rico. In other cases of State or Federal aid, the total extent of any practice carried out shall be reduced for purposes of payment by twice the percentage of the total cost of the practice which the State office determines was furnished by a State or Federal agency or any agency of the Government of Puerto Rico.

(Sec. 4, 49 Stat. 164; 16 U. S. C. 590d. Interpret or apply secs. 7-17, 49 Stat. 1148, as amended; 63 Stat. 524; 16 U. S. C. and Sup. 590g-590q)

Done at Washington, D. C. this 12th day of May 1950.

[SEAL] CLAUDE R. WICKARD,  
*Acting Secretary of Agriculture.*

[P. R. Doc. 50-4200; Filed, May 16, 1950; 8:50 a. m.]

## TITLE 24—HOUSING AND HOUSING CREDIT

### Chapter VIII—Office of Housing Expediter

[Controlled Housing Rent Reg., Amdt. 246]

[Controlled Rooms in Rooming Houses and Other Establishments Rent Reg., Amdt. 243]

#### PART 825—RENT REGULATIONS UNDER THE HOUSING AND RENT ACT OF 1947, AS AMENDED

##### CALIFORNIA, IDAHO, OHIO, AND SOUTH CAROLINA

The Controlled Housing Rent Regulation (§§ 825.1 to 825.12) and the Rent Regulation for Controlled Rooms in Rooming Houses and Other Establishments (§§ 825.81 to 825.92) are amended in the following respects:

1. Schedule A, Item 30, is amended to describe the counties in the defense-rental area as follows:

Orange County, except (1) the Cities of Fullerton, Huntington Beach, Laguna Beach, Newport Beach, and Orange, (2) that portion of Orange County lying south of the south line of Township Six south, Range Eight West, San Bernardino Base and Meridian, and the easterly and westerly prolongation of said south line, and (3) that portion of Orange County beginning at the intersection

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# FEDERAL REGISTER

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of the north line of Section 12, Township 5 South, Range 12 West, San Bernardino Base and Meridian with the westerly line of said Orange County; running thence from said point of beginning easterly along Section lines to the northeast corner of Section 9, Township 5 South, Range 11 West, San Bernardino Base and Meridian; thence southerly along section lines to the northerly boundary line of the City of Huntington Beach, thence westerly and southerly along said boundary line of the City of Huntington Beach to the ordinary high tide line of the Pacific Ocean; thence northwesterly along said high tide line to the westerly boundary line of Orange County; thence northeasterly along said boundary line to the point of beginning; including the incorporated City of Seal Beach, and the unincorporated communities of Sunset Beach and Surfside.

Los Angeles County, except Catalina Township and the Cities of Alhambra, Bell, Beverly Hills, Claremont, Compton, Covina, El Monte, El Segundo, Glendale, Hermosa Beach, Huntington Park, La Verne, Long Beach, Lynwood, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Pasadena, Pomona, Redondo Beach, Santa Monica, Sierra Madre, Signal Hill, South Gate and South Pasadena.

This decontrols the Cities of Compton, Montebello and Monterey Park, in Los Angeles County, California, portions of Los Angeles, California, Defense-Rental Area, based on resolutions submitted in accordance with section 204 (j) (3) of the Housing and Rent Act of 1947, as amended.

2. Schedule A, Item 80b, is amended to read as follows:

(80b) [Revoked and decontrolled.]

This decontrols the entire Blackfoot, Idaho, Defense-Rental Area, based on the Housing Expediter's own initiative in accordance with section 204 (c) of the Housing and Rent Act of 1947, as amended.

3. Schedule A, Item 233, is amended to describe the counties in the defense-rental area as follows:

Lorain County, except the Townships of Brighton, Huntington, Penfield, Rochester and Wellington and the Villages of Wellington and Rochester.

This decontrols the Townships of Brighton, Huntington, Penfield, Rochester and Wellington and the Villages of Wellington and Rochester in Lorain County, Ohio, portions of the Lorain-Elyria, Ohio, Defense-Rental Area, based on the Housing Expediter's own initiative in accordance with section 204 (c) of the Housing and Rent Act of 1947, as amended.

4. Schedule A, Item 281, is amended to read as follows:

(281) [Revoked and decontrolled.]

This decontrols (1) the City of Spartanburg, South Carolina in the Spartanburg, South Carolina, Defense-Rental Area, based on a resolution submitted in accordance with section 204 (j) (3) of the Housing and Rent Act of 1947, as amended, and (2) the remainder of said defense-rental area on the Housing Expediter's own initiative in accordance with section 204 (c) of said act.

(Sec. 204, 61 Stat. 197, as amended; 50 U. S. C. App. Sup. 1894)

This amendment shall become effective May 12, 1950.

Issued this 12th day of May 1950.

TIGHE E. WOODS,  
Housing Expediter.

[F. R. Doc. 50-4178; Filed, May 16, 1950;  
8:47 a. m.]

## TITLE 29—LABOR

Chapter V—Wage and Hour Division,  
Department of LaborSubchapter B—Statements of General Policy or  
Interpretation Not Directly Related to Regula-  
tionsPART 776—INTERPRETATIVE BULLETIN OF  
THE GENERAL COVERAGE OF THE WAGE  
AND HOURS PROVISIONS OF THE FAIR LA-  
BOR STANDARDS ACT OF 1938, AS AMENDED

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AUTHORITY: §§ 776.0 to 776.21 issued under 52 Stat. 1060, as amended; 29 U. S. C. and Sup. 201 et seq.

## SUBPART A—GENERAL

§ 776.0 *Introductory statement*—(a) *Scope and significance of this part.* The Fair Labor Standards Act of 1938, as amended<sup>1</sup> (hereinafter referred to as the act), bring within the general coverage of its wage and hours provisions every employee who is "engaged in commerce or in the production of goods for commerce."<sup>2</sup> What employees are so engaged must be ascertained in the light of the definitions of "commerce", "goods", and "produced" which are set forth in the act as amended by the Fair Labor Standards Amendments of 1949,<sup>3</sup> giving due regard to authoritative interpretations by the courts and to the legislative history of the act, as amended. Interpretations of the Administrator of the Wage and Hour Division with respect to this general coverage are set forth herein to provide "a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it."<sup>4</sup> These interpretations, with respect to the general coverage of the wage and hours provisions of the act, indicate the con-

<sup>1</sup> Pub. No. 718, 75th Cong., 3d sess. (52 Stat. 1060), as amended by the act of June 26, 1940 (Pub. Res. No. 88, 76th Cong., 3d sess., 54 Stat. 616); by Reorganization Plan No. 2 (60 Stat. 1095), effective July 16, 1946; by the Portal-to-Portal Act of 1947, approved May 14, 1947 (61 Stat. 84); and by the Fair Labor Standards Amendments of 1949, approved October 26, 1949 (Public Law 393, 81st Cong., 1st sess., 63 Stat. 910).

<sup>2</sup> The requirement of section 6 as to minimum wages is: "Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—" (not less than 75 cents an hour, except in Puerto Rico and the Virgin Islands to which special provisions apply).

The requirement of section 7 as to maximum hours which an employee may work without receiving extra pay for overtime is: "no employer shall employ any of his employees who is engaged in commerce or in the production of goods for commerce for a workweek longer than forty hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

<sup>3</sup> Public Law 393, 81st Cong., 1st sess., (63 Stat. 910). These amendments, effective January 25, 1950, leave the existing law unchanged except as to provisions specifically amended and the addition of certain new provisions. Section 3 (b) of the act, defining "commerce" and section 3 (j), defining "produced," were specifically amended as explained in §§ 776.13 and 776.17 (a) herein.

<sup>4</sup> *Skidmore v. Swift & Co.*, 323 U. S. 134, 138.

struction of the law which the Administrator believes to be correct and which will guide him in the performance of his administrative duties under the act unless and until he is otherwise directed by authoritative decisions of the courts or concludes, upon re-examination of an interpretation, that it is incorrect.

Under the Portal-to-Portal Act of 1947,<sup>8</sup> interpretations of the Administrator may, under certain circumstances, be controlling in determining the rights and liabilities of employers and employees. The interpretations contained in this bulletin are interpretations on which reliance may be placed as provided in section 10 of the Portal-to-Portal act, so long as they remain effective and are not modified, amended, rescinded, or determined by judicial authority to be incorrect. However, the omission to discuss a particular problem in this bulletin or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Administrator with respect to such problem or to constitute an administrative interpretation or practice or enforcement policy.

(b) *Exemptions and child labor provisions not discussed.* This bulletin does not deal with the various specific exemptions provided in the statute, under which certain employees engaged in commerce or in the production of goods for commerce and thus within the general coverage of the wage and hours provisions are wholly or partially excluded from the protection of the act's minimum-wage and overtime-pay requirements. Some of these exemptions are self-executing; others call for definitions or other action by the Administrator. Regulations and interpretations relating to specific exemptions may be found in other parts of this chapter. Coverage and exemptions under the child labor provisions of the act are discussed in a separate interpretative bulletin (Part 450 of this chapter) issued by the Secretary of Labor.

(c) *Earlier interpretations superceded.* All general and specific interpretations issued prior to July 11, 1947, with respect to the general coverage of the wage and hours provisions of the act were rescinded and withdrawn by § 776.0 (b) of the general statement on this subject, published in the FEDERAL REGISTER on that date as Part 776 of this chapter (12 F. R. 4583). To the extent that interpretations contained in such general statement or in releases, opinion letters, and other statements issued on or after July 11, 1947, are inconsistent with the provisions of the Fair Labor Standards Amendments of 1949, they do not continue in effect after January 24, 1950.<sup>9</sup> Effective on the date of its pub-

lication in the FEDERAL REGISTER, Subpart A of this interpretative bulletin replaces and supersedes the general statement previously published as Part 776 of this chapter, which statement is withdrawn. All other administrative rulings, interpretations, practices and enforcement policies relating to the general coverage of the wage and hours provisions of the act and not withdrawn prior to such date are, to the extent that they are inconsistent with or in conflict with the principles stated in this interpretative bulletin, hereby rescinded and withdrawn.

#### HOW COVERAGE IS DETERMINED

§ 776.1 *General interpretative guides.* The Congressional policy under which employees "engaged in commerce or in the production of goods for commerce" are brought within the general coverage of the act's wage and hours provisions is stated in section 2 of the act. This section makes it clear that the Congressional power to regulate interstate and foreign commerce is exercised in this act in order to remedy certain evils, namely: "labor conditions detrimental to the maintenance of the minimum standards of living necessary for health, efficiency, and the general well being of workers" which Congress found "(a) causes commerce and the channels and instrumentalities of commerce to be used to perpetuate such labor conditions among the workers of the several States; (b) burdens commerce and the free flow of goods in commerce; (c) constitutes an unfair method of competition in commerce; (d) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce and (e) interferes with the orderly and fair marketing of goods in commerce." In carrying out these broad remedial purposes, however, the Congress did not choose to make the scope of the act co-extensive in all respects with the limits of its power over commerce or to apply it to all activities affecting commerce.<sup>1</sup> Congress delimited the area in which the act operates by providing for certain exceptions and exemptions, and by making wage-hour coverage applicable only to employees who are "engaged in" either "commerce", as defined in the act, or "production" of "goods" for such commerce, within the meaning of the act's definitions of these terms. The Fair Labor Standards Amendments of 1949 indicate an intention to restrict somewhat the category of employees within the reach of the act under the former

of this act, shall remain in effect as an order, regulation, interpretation, or agreement of the Administrator or the Secretary, as the case may be, pursuant to this act, except to the extent that any such order, regulation, interpretation, or agreement may be inconsistent with the provisions of this act, or may from time to time be amended, modified, or rescinded by the Administrator or the Secretary, as the case may be, in accordance with the provisions of this act."

<sup>1</sup> *Kirschbaum v. Walling*, 316 U. S. 517; *Walling v. Jacksonville Paper Co.*, 317 U. S. 564; *10 East 40th St. Bldg. Co. v. Callus*, 325 U. S. 578; *A. H. Phillips, Inc. v. Walling*, 324 U. S. 490; *Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 82 (C. A. 8); *Armstrong v. Walling*, 161 F. 2d 515 (C. A. 1); *Bowie v. Gonzalez*, 117 F. 2d 11 (C. A. 1).

definition of "produced" and to expand to some extent the group covered under the former definition of "commerce." In his interpretations, the Administrator will endeavor to give effect to both the broad remedial purposes of the act and the limitations on its application, seeking guidance in his task from the terms of the statute, from authoritative court decisions, and from the legislative history of the act, as amended.<sup>2</sup>

#### § 776.2 *Employee basis of coverage.*

The coverage of the act's wage and hours provisions as described in sections 6 and 7 does not deal in a blanket way with industries as a whole. Thus, in section 6, it is provided that every employer shall pay the statutory minimum wage to "each of his employees who is engaged in commerce or in the production of goods for commerce." It thus becomes primarily an individual matter as to the nature of the employment of the particular employee. Some employers in a given industry may have no employees covered by the act; other employers in the industry may have some employees covered by the act, and not others; still other employers in the industry may have all their employees within the act's coverage. If, after considering all relevant factors, employees are found to be engaged in covered work, their employer cannot avoid his obligations to them under the act on the ground that he is not "engaged in commerce or in the production of goods for commerce." To the extent that his employees are so engaged, he is himself so engaged.<sup>3</sup>

In determining whether an individual employee is within the coverage of the wage and hours provisions, however, the relationship of an employer's business to commerce or to the production of goods for commerce may sometimes be an important indication of the character of the employee's work.<sup>4</sup> It is apparent, too, from the 1949 amendment to the definition of "produced" and its legislative history that an examination of the character of the employer's business will in some borderline situations be necessary

<sup>2</sup> Footnote references to some of the relevant court decisions are made for the assistance of readers who may be interested in such decisions.

Footnote references to the legislative history of the 1949 amendments are made at points in this part where it is believed they may be helpful. References to the *Statement of the Managers on the Part of the House*, appended to the Conference Report on the amendments (H. Rept. No. 1453, 81st Cong., 1st sess.) are abbreviated: H. Mgrs. St., 1949, p. —. References to the *Statement of a majority of the Senate Conference*, 95 Cong. Rec., October 19, 1949 at 15372-15377 are abbreviated: Sen. St., 1949 Cong. Rec. References to the Congressional Record are to the 1949 daily issues, the permanent volumes being unavailable at the time this part was prepared.

<sup>3</sup> *Kirschbaum v. Walling*, 316 U. S. 517. See also *Walling v. Jacksonville Paper Co.*, 317 U. S. 564; *McLeod v. Threlkeld*, 319 U. S. 491; *Mabee v. White Plains Pub. Co.*, 327 U. S. 178.

<sup>4</sup> *Borden Co. v. Borella*, 325 U. S. 679; *10 E. 40th St. Bldg. Co. v. Callus*, 325 U. S. 578; *Armour & Co. v. Wantock*, 323 U. S. 126; *Donovan v. Shell Oil Co.*, 168 F. 2d 229 (C. A. 4); *Hertz Driveurself Stations v. United States*, 150 F. 2d 923 (C. A. 8); *Horton v. Wilson & Co.*, 223 N. C. 71, 25 S. E. 2d 437.

<sup>8</sup> Public Law 49, 80th Cong., 1st sess. (61 Stat. 84), discussed in Part 790 of this chapter.

<sup>9</sup> Section 16 (c) of the Fair Labor Standards Amendments of 1949 (63 Stat. 910) provides:

"Any order, regulation, or interpretation of the Administrator of the Wage and Hour Division or of the Secretary of Labor, and any agreement entered into by the Administrator or the Secretary, in effect under the provisions of the Fair Labor Standards Act of 1938, as amended, on the effective date

in determining whether the employee's occupation bears the requisite close relationship to production for commerce.<sup>11</sup>

§ 776.3 *Persons engaging in both covered and noncovered activities.* The act applies to employees "engaged in commerce or in the production of goods for commerce" without regard to whether such employees, or their employer, are also engaged in other activities which would not bring them within the coverage of the act. The act makes no distinction as to the percentage, volume, or amount of activities of either employee or employer which constitute engaging in commerce or in the production of goods for commerce. Sections 6 and 7 refer to "each" and "any" employee so engaged, and section 15 (a) (1) prohibits the introduction into the channels of interstate or foreign commerce of "any" goods in the production of which "any" employee was employed in violation of section 6 or section 7. Although employees doing work in connection with mere isolated, sporadic, or occasional shipments in commerce of insubstantial amounts of goods will not be considered by virtue of that fact alone, the law is settled that every employee whose engagement in activities in commerce or in the production of goods for commerce, even though small in amount, is regular and recurring, is covered by the act.<sup>12</sup> This does not, however, necessarily mean that an employee who at some particular time may engage in work which brings him within the coverage of the act is, by reason of that fact, thereafter indefinitely entitled to its benefits.

§ 776.4 *Workweek standard.* The workweek is to be taken as the standard in determining the applicability of the act.<sup>13</sup> Thus, if in any workweek an employee is engaged in both covered and noncovered work he is entitled to both the wage and hours benefits of the act for all the time worked in that week, unless exempted therefrom by some specific provision of the act. The proportion of his time spent by the employee in each type of work is not material. If he spends any part of the workweek in covered work he will be considered on exactly the same basis as if he had engaged exclusively in such work for the entire period. Accordingly, the total number of hours which he works during the workweek at both types of work must be compensated for in accordance with the

minimum wage and overtime pay provisions of the act.

It is thus recognized that an employee may be subject to the act in one workweek and not in the next. It is likewise true that some employees of an employer may be subject to the act and others not. But the burden of effecting segregation between covered and noncovered work as between particular workweeks for a given employee or as between different groups of employees is upon the employer. Where covered work is being regularly or recurrently performed by his employees, and the employer seeks to segregate such work and thereby relieve himself of his obligations under sections 6 and 7 with respect to particular employees in particular workweeks, he should be prepared to show, and to demonstrate from his records, that such employees in those workweeks did not engage in any activities in interstate or foreign commerce or in the production of goods for such commerce, which would necessarily include a showing that such employees did not handle or work on goods or materials shipped in commerce or used in production of goods for commerce, or engage in any other work closely related and directly essential to production of goods for commerce.<sup>14</sup> The Division's experience has indicated that much so-called "segregation" does not satisfy these tests and that many so-called "segregated" employees are in fact engaged in commerce or in the production of goods for commerce.

§ 776.5 *Coverage not dependent on method of compensation.* The act's coverage is not limited to employees working on an hourly wage. The requirement of section 6 as to minimum wages on and after January 25, 1950, is that "each" employee engaged in commerce or in the production of goods for commerce must be paid wages at a rate not less than 75 cents an hour.<sup>15</sup> This does not mean that employees cannot be paid on a piecework basis or on a salary, commission, or other basis; it merely means that whatever the basis on which the workers are paid, whether it be monthly, weekly, or on a piecework basis, they must receive at least the equivalent of the minimum hourly rate. "Each" and "any" employee obviously and necessarily includes one compensated by a unit of time, by the piece, or by any other measurement.<sup>16</sup> Regulations prescribed by the Administrator (Part 516 of this chapter) provide for the keeping of records in such form as to enable compensation on a piecework or other basis to be translated into an hourly rate.<sup>17</sup>

§ 776.6 *Coverage not dependent on place of work.* Except for the general geographical limitations discussed in § 776.7, the act contains no prescription as to the place where the employee must

work in order to come within its coverage. It follows that employees otherwise coming within the terms of the act are entitled to its benefits whether they perform their work at home, in the factory, or elsewhere.<sup>18</sup> The specific provisions of the act relative to regulation of home-work serve to emphasize this fact.<sup>19</sup>

§ 776.7 *Geographical scope of coverage.* The geographical areas within which the employees are to be deemed "engaged in commerce or in the production of goods for commerce" within the meaning of the act, and thus within its coverage are governed by definitions in section 3 (b), (c), and (j). In the definition of "produced" in section 3 (j), "production" is expressly confined to described employments "in any State." (See § 776.15 (a).) "Commerce" is defined to mean described activities "among the several States or between any State and any place outside thereof." (See § 776.8.) "State" is defined in section 3 (c) to mean "any State of the United States or the District of Columbia or any Territory or possession of the United States."

Under these definitions, employees within the District of Columbia and within the territories and possessions (e. g. Alaska, Hawaii, Puerto Rico, the Canal Zone, Guam, Guano Islands, Samoa, Virgin Islands)<sup>20</sup> are dealt with on the same basis as employees working in any of the forty-eight States. Congress did not exercise the national legislative power over the District of Columbia or the Territories or possessions referred to by extending the act to purely local commerce within them.

#### ENGAGING "IN COMMERCE"

§ 776.8 *The statutory provisions.* The activities constituting "commerce" within the meaning of the phrase "engaged in commerce" in sections 6 and 7 of the act are defined in section 3 (b) as follows:

"Commerce" means trade, commerce, transportation, transmission, or communication among the several States, or between any State and any place outside thereof.<sup>21</sup>

<sup>11</sup> *Walling v. American Needlecrafts*, 130 F. 2d 60 (C. A. 6); *Walling v. Tycetoff Inc.*, 158 F. 2d 944 (C. A. 2); *McComb v. Homeworke's Handicraft Cooperative*, 176 F. 2d 633 (C. A. 4).

<sup>12</sup> See 6 (a) (2); Sec. 11 (d).

<sup>13</sup> An area subject to the sovereignty of another nation may, by virtue of the operation of an agreement between that nation and the United States, become a "possession of the United States" within the meaning of this act (*Vermilya-Brown Co. v. Connell*, 335 U. S. 377 (Bermuda bases leased from Great Britain); see also *United States v. Spelar*, 338 U. S. 217). However, where such status of an area in a foreign country has not been established, the Administrator is not prepared to assert coverage with respect to any employee in any workweek in which he works there exclusively. On the other hand, when part of the work performed by an employee for an employer in any workweek is covered work performed in any State, it makes no difference where the remainder of such work is performed; the employee is entitled to the benefits of the act for the entire workweek unless he comes within some specific exemption.

<sup>21</sup> As amended by section 3 (a) of the Fair Labor Standards Amendments of 1949.

<sup>11</sup> H. Mgrs. St., 1949, pp. 14, 15; Sen. St., 1949 Cong. Rec. 15372.

<sup>12</sup> *United States v. Darby*, 312 U. S. 100; *Mabee v. White Plains Pub. Co.*, 327 U. S. 178; *Schmidt v. Peoples Telephone Union of Maryville, Missouri*, 138 F. 2d 13 (C. A. 8); *New Mexico Public Service Co. v. Engel*, 145 F. 2d 636 (C. A. 10); *Sun Pub. Co. v. Walling*, 140 F. 2d 445 (C. A. 6), certiorari denied 322 U. S. 728; *Davis v. Goodman Lumber Co.*, 133 F. 2d 52 (C. A. 4).

<sup>13</sup> See *Gordon's Transports v. Walling*, 162 F. 2d 203 (C. A. 6), certiorari denied 332 U. S. 774; *Walling v. Fox-Pelletier Detective Agency*, 4 W. H. Cases 452 (W. D. Tenn.), 8 Labor Cases 62,219; *Walling v. Black Diamond Coal Mining Co.*, 59 F. Supp. 348 (W. D. Ky.); *Fleming v. Knox*, 42 F. Supp. 948 (S. D. Ga.); *Roberts v. Henry Phipps Estate*, 156 F. 2d 958 (C. A. 2). For a definition of the workweek, see § 776.2 (c) of this chapter.

<sup>14</sup> See *Guess v. Montague*, 140 F. 2d 500 (C. A. 4).

<sup>15</sup> Special exceptions are made for Puerto Rico and the Virgin Islands.

<sup>16</sup> *United States v. Rosenwasser*, 323 U. S. 360.

<sup>17</sup> For methods of translating other forms of compensation into an hourly rate for purposes of sections 6 and 7, see Parts 777 and 778 of this chapter.

As has been noted in § 776.7 of this bulletin, the word "State" in this definition refers not only to any of the forty-eight States but also to the District of Columbia and to any Territory or possession of the United States.

It should be observed that the term "commerce" is very broadly defined. The definition does not limit the term to transportation, or to the "commercial" transactions involved in "trade," although these are expressly included. Neither is the term confined to commerce in "goods." Obviously, "transportation" or "commerce" between any State and any place outside its boundaries includes a movement of persons as well as a movement of goods. And "transmission" or "communication" across State lines constitutes "commerce" under the definition, without reference to whether anything so transmitted or communicated is "goods."<sup>22</sup> The inclusion of the term "commerce" in the definition of the same term as used in the act implies that no special or limited meaning is intended; rather, that the scope of the term for purposes of the act is at least as broad as it would be under concepts of "commerce" established without reference to this definition.

§ 776.9 *General scope of "in commerce" coverage.* Under the definitions quoted above, it is clear that the employees who are covered by the wage and hours provisions of the act as employees "engaged in commerce" are employees doing work involving or related to the movement of persons or things (whether tangibles or intangibles, and including information and intelligence) "among the several States or between any State and any place outside thereof."<sup>23</sup> Although this does not include employees engaged in activities which merely "affect" such interstate or foreign commerce, the courts have made it clear that coverage of the act based on engaging in commerce extends to every employee employed "in the channels of" such commerce or in activities so closely related to such commerce, as a practical matter, that they should be considered a part of it.<sup>24</sup> The courts have indicated that the words "in commerce" should not be so limited by construction as to defeat the purpose of Congress, but should be interpreted in a manner consistent with their practical meaning and effect in the particular situation. One practical question to be asked is whether, without the particular service, interstate or foreign commerce would be impeded, impaired, or

abated;<sup>25</sup> others are whether the service contributes materially to the consummation of transactions in interstate or foreign commerce<sup>26</sup> or makes it possible for existing instrumentalities of commerce<sup>27</sup> to accomplish the movement of such commerce effectively and to free it from burdens or obstructions.<sup>28</sup>

§ 776.10 *Employees participating in the actual movement of commerce.* Under the principles stated in § 776.9, the wage and hours provisions of the act apply typically, but not exclusively, to employees such as those in the telephone,<sup>29</sup> telegraph,<sup>30</sup> television,<sup>31</sup> radio,<sup>32</sup> transportation and shipping<sup>33</sup> industries, since these industries serve as the actual instrumentalities and channels of interstate and foreign commerce. Similarly, employees of such businesses as banking (see Subpart B of this part), insurance (see Subpart B of this part), newspaper publishing,<sup>34</sup> and others (see Subpart B of this part) which regularly utilize the channels of interstate and foreign commerce in the course of their operations, are generally covered by the act.

Employees whose work is an essential part of the stream of interstate or foreign commerce, in whatever type of business they are employed, are likewise engaged in commerce and within the act's coverage. This would include, for example, employees of a warehouse whose activities are connected with the

receipt or distribution of goods across State lines.<sup>35</sup> Also, since "commerce" as used in the act includes not only "transmission" of communications but "communication" itself, employees whose work involves the continued use of the interstate mails, telegraph, telephone or similar instrumentalities for communication across State lines are covered by the act.<sup>36</sup> This does not mean that any use by an employee of the mails and other channels of communication is sufficient to establish coverage. But if the employee, as a regular and recurrent part of his duties, uses such instrumentalities in obtaining or communicating information or in sending or receiving written reports or messages, or orders for goods or services, or plans or other documents across State lines, he comes within the scope of the act as an employee directly engaged in the work of "communication" between the State and places outside the State.

§ 776.11 *Employees doing work related to instrumentalities of commerce.* Another large category of employees covered as "engaged in commerce" is comprised of employees performing the work involved in the maintenance, repair, or improvement of existing instrumentalities of commerce. (See the cases cited in footnote 27 to § 776.9. See also the discussion of coverage of employees engaged in building and construction work, in Subpart B of this part.) Typical illustrations of instrumentalities of commerce include railroads, highways, city streets, pipe lines, telephone lines, electrical transmission lines, rivers, streams, or other waterways over which interstate or foreign commerce more or less regularly moves; airports; railroad, bus, truck, or steamship terminals; telephone exchanges, radio and television stations, post offices and express offices; bridges and ferries carrying traffic moving in interstate or foreign commerce (even though within a single State); bays, harbors, piers, wharves and docks used for shipping between a State and points outside; dams, dikes, revetments and levees which directly facilitate the uninterrupted movement of commerce by enhancing or improving the usefulness of waterways, railways, and highways through control of water depth, channels, or flow in streams or through control of flood waters; warehouses or distribution depots devoted to the receipt and shipment of goods in interstate or foreign commerce; ships, vehicles, and aircraft regularly used in transportation of persons or goods in commerce; and similar fixed or movable facilities on which the flow of interstate and foreign commerce depends.

It is well settled that the work of employees involved in the maintenance, repair, or improvement of such existing

<sup>22</sup> "Goods" is, however, broadly defined in the act. See § 776.20 (a).

<sup>23</sup> "Any place outside thereof" is not limited in meaning to another State or country. Any movement between a State and a place "outside thereof" is "commerce" for purposes of the act, such as ship-to-shore communication, or transportation out of a State by ship of food, fuel, or ice to be consumed at sea before arrival at another port.

<sup>24</sup> *Walling v. Jacksonville Paper Co.*, 317 U. S. 564; *Overstreet v. North Shore Corp.*, 318 U. S. 125; *McLeod v. Threlkeld*, 319 U. S. 491; *Boutell v. Walling*, 327 U. S. 463; *Pedersen v. J. F. Fitzgerald Constr. Co.*, 318 U. S. 740 and 324 U. S. 720.

<sup>25</sup> *Republic Pictures Corp. v. Kappler*, 151 F. 2d 543 (C. A. 8), affirmed 327 U. S. 757; *New Mexico Public Service Co. v. Engel*, 145 F. 2d 636 (C. A. 10).

<sup>26</sup> *Walling v. Sondock*, 132 F. 2d 77 (C. A. 5), certiorari denied 318 U. S. 772. See also *Horton v. Wilson & Co.*, 223 N. C. 71, 25 S. E. 2d 437, in which the court stated that an employee is engaged "in commerce" if his services—not too remotely but substantially and directly—aid in such commerce as defined in the act.

<sup>27</sup> For a list of such instrumentalities, see § 776.11.

<sup>28</sup> *Overstreet v. North Shore Corp.*, 318 U. S. 125; *J. F. Fitzgerald Constr. Co. v. Pedersen*, 324 U. S. 720; *Ritch v. Puget Sound Bridge & Dredging Co.*, 156 F. 2d 334 (C. A. 9); *Walling v. McCrady Constr. Co.*, 156 F. 2d 932 (C. A. 3); *Bennett v. V. P. Loftis*, 167 F. 2d 286 (C. A. 4); *Walling v. Patton-Tully Transp. Co.*, 134 F. 2d 945 (C. A. 6).

<sup>29</sup> *Schmidt v. Peoples Telephone Union of Maryville, Mo.*, 138 F. 2d 13 (C. A. 8); *North Shore Corp. v. Barnett*, 143 F. 2d 172 (C. A. 5); *Strand v. Garden Valley Telephone Co.*, 51 F. Supp. 898 (D. Minn.).

<sup>30</sup> *Western Union Telegraph Co. v. Lenroot*, 323 U. S. 490; *Western Union Telegraph Co. v. McComb*, 165 F. 2d 65 (C. A. 6), certiorari denied 333 U. S. 862; *Moss v. Postal Telegraph Cable Co.*, 42 F. Supp. 807 (M. D. Ga.).

<sup>31</sup> *Wilson v. Shuman*, 140 F. 2d 644 (C. A. 8); *Wabash Radio Corp. v. Walling*, 162 F. 2d 391 (C. A. 6).

<sup>32</sup> *Overnight Motor Co. v. Missel*, 316 U. S. 572; *Hargis v. Wabash R. Co.*, 163 F. 2d 607 (C. A. 7); *Rockton & Rion R. v. Walling*, 146 F. 2d 111 (C. A. 4), certiorari denied 334 U. S. 880; *Walling v. Keansburg Steamboat Co.*, 162 F. 2d 405 (C. A. 3); *Knudsen v. Lee & Simmons*, 163 F. 2d 95 (C. A. 2); *Walling v. Southwestern Greyhound Lines*, 65 F. Supp. 52 (W. D. Mo.); *Walling v. Atlantic Greyhound Corp.*, 61 F. Supp. 992 (E. D. S. C.).

<sup>33</sup> *Sun Pub. Co. v. Walling*, 140 F. 2d 445 (C. A. 6), certiorari denied 322 U. S. 728. See also *Oklahoma Press Pub. Co. v. Walling*, 327 U. S. 186, and *McComb v. Dessau*, 9 W. H. Cases 332 (S. D. Calif.), 17 Labor Cases, 65/643.

<sup>34</sup> *Phillips Co. v. Walling*, 324 U. S. 490; *Clyde v. Broderick*, 144 F. 2d 348 (C. A. 10). And see § 776.33.

<sup>35</sup> *McComb v. Weller*, 9 W. H. Cases 53 (W. D. Tenn.); *Yunker v. Abbe Employment Agency*, 32 N. Y. S. 2d 715; (Munic. Ct. N. Y. C.); *Phillips v. Meeker Coop. Light & Power Assn.*, 63 F. Supp. 733 (D. Minn.); *Anderson Bros. Corp. v. Flynn*, 218 S. W. 2d 653 (C. A. Ky.).

instrumentalities of commerce is so closely related to interstate or foreign commerce as to be in practice and in legal contemplation a part of it. Included among the employees who are thus "engaged in commerce" within the meaning of the act are employees of railroads, telephone companies, and similar instrumentalities who are engaged in maintenance-of-way work;<sup>10</sup> employees (including office workers, guards, watchmen, etc.) engaged in work on contracts or projects for the maintenance, repair, reconstruction or other improvement of such instrumentalities of commerce as the transportation facilities of interstate railroads, highways, waterways, or other interstate transportation facilities, or interstate telegraph, telephone, or electrical transmission facilities (see Subpart B of this part); and employees engaged in the maintenance or alteration and repair of ships<sup>11</sup> or trucks<sup>12</sup> used as instrumentalities of interstate or foreign commerce. Also, employees have been held covered as engaged in commerce where they perform such work as watching or guarding ships or vehicles which are regularly used in commerce<sup>13</sup> or maintaining, watching, or guarding warehouses, railroad or equipment yards, etc., where goods moving in interstate commerce are temporarily held,<sup>14</sup> or acting as porters, janitors, or in other maintenance capacities in bus stations, railroad stations, airports, or other transportation terminals.<sup>15</sup>

<sup>10</sup> *Davis v. Rockton & Rion R. R.*, 65 F. Supp. 67, affirmed in 159 F. 2d 291 (C. A. 4); *North Shore Corp. v. Barnett*, 143 F. 2d 172 (C. A. 5); *Palmer v. Howard*, 12 Lab. Cas. (CCH) par. 63, 756 (W. D. Tenn.); *Williams v. Atlantic Coast Lines R. R. Co.*, 1 W. H. Cases 289 (E. D. N. C. 1940); 2 Labor Cases (CCH) par. 18, 564.

<sup>11</sup> *Slover v. Wathen*, 140 F. 2d 258 (C. A. 4); *Walling v. Keansburg Steamboat Co.*, 162 F. 2d 405 (C. A. 3).

<sup>12</sup> *Boutell v. Walling*, 327 U. S. 463; *Morris v. McComb*, 332 U. S. 422; *Skidmore v. John J. Casale, Inc.*, 160 F. 2d 527 (C. A. 2), certiorari denied 331 U. S. 812; *Hertz Drive-Share Stations v. United States*, 150 F. 2d 923 (C. A. 8); *Walling v. Sturm & Sons, Inc.*, 6 W. H. Cases 131 (D. N. J.); 10 Labor Cases (CCH) par. 62, 980.

As to exemptions from the overtime requirements for mechanics employed by motor carriers, see Part 782 of this chapter. For exemptions applicable to retail or service establishments, see Part 779 of this chapter.

<sup>13</sup> *Slover v. Wathen*, 140 F. 2d 258 (C. A. 4); *Agosto v. Rocafort*, 5 W. H. Cases 176 (D. P. R.); 9 Labor Cases (CCH) par. 62, 610; *Cannon v. Miller*, 155 F. 2d 500 (S. Ct. Wash.).

<sup>14</sup> *Engelbreton v. E. J. Albrecht Co.*, 150 F. 2d 602 (C. A. 7); *Mid-Continent Petroleum Corp. v. Keen*, 157 F. 2d 310 (C. A. 8); *Walling v. Mutual Wholesale Food & Supply Co.*, 141 F. 2d 331 (C. A. 8); *Walling v. Soudock*, 132 F. 2d 77 (C. A. 5); certiorari denied 318 U. S. 772; *Reliance Storage & Insp. Co. v. Hubbard*, 50 F. Supp. 1012 (W. D. Va.); *Walling v. Fox-Pelletier Detective Agency*, 4 W. H. Cases 452 (W. D. Tenn. 1944); 8 Labor Cases (CCH) par. 62, 219; *McComb v. Russell Co.*, 9 W. H. Cases 258 (D. Miss. 1949); 17 Labor Cases (CCH) par. 65, 519.

<sup>15</sup> *Mornford v. Andrews*, 151 F. 2d 511 (C. A. 5); *Hargis v. Wabash R. Co.*, 163 F. 2d 607 (C. A. 7); *Walling v. Atlantic Greyhound Corp.*, 61 F. Supp. 692 (E. D. S. C.); *Rouch v. Continental Oil Co.*, 55 F. Supp. 315 (D. Kans.); see also *Williams v. Jacksonville Terminal Co.*, 315 U. S. 306.

On the other hand, work which is less immediately related to the functioning of instrumentalities of commerce than is the case in the foregoing examples may be too remote from interstate or foreign commerce to establish coverage on the ground that the employee performing it is "engaged in commerce." This has been held true, for example, of a cook preparing meals for workmen who are repairing tracks over which interstate trains operate,<sup>16</sup> and of a porter caring for washrooms and lockers in a garage which is not an instrumentality of commerce, where trucks used both in intrastate and interstate commerce are serviced.<sup>17</sup>

There are other situations in which employees are engaged "in commerce" and therefore within the coverage of the Act because they contribute directly to the movement of commerce by providing goods or facilities to be used or consumed by instrumentalities of commerce in the direct furtherance of their activities of transportation, communication, transmission, or other movement in interstate or foreign commerce. Thus, for example, employees are considered engaged "in commerce" where they provide to railroads, radio stations, airports, telephone exchanges, or other similar instrumentalities of commerce such things as electric energy,<sup>18</sup> steam, fuel, or water, which are required for the movement of the commerce carried by such instrumentalities.<sup>19</sup> Such work is "so related to the actual movement of commerce as to be considered an essential and indispensable part thereof, and without which it would be impeded or impaired."<sup>20</sup>

**§ 776.12 Employees traveling across State lines.** Questions are frequently asked as to whether the fact that an employee crosses State lines in connection with his employment brings him within the act's coverage as an employee "engaged in commerce." Typical of the employments in which such questions arise are those of traveling service men, traveling buyers, traveling construction crews, collectors, and employees of such organizations as circuses, carnivals, road shows, and orchestras. The area of coverage in such situations cannot be delimited by any exact formula, since questions of degree are necessarily involved. If the employee transports material or equipment or other persons across State lines or within a particular State as a part of an interstate movement, it is clear, of course, that he is engaging in commerce.<sup>21</sup>

<sup>16</sup> *McLeod v. Threlkeld*, 319 U. S. 491.

<sup>17</sup> *Skidmore v. John J. Casale, Inc.*, 160 F. 2d 527, certiorari denied 331 U. S. 812 (use in interstate commerce of trucks serviced was from 10 to 25 percent of total use).

<sup>18</sup> *New Mexico Public Service Co. v. Engel*, 145 F. 2d 636 (C. A. 10); *Walling v. Connecticut Co.*, 154 F. 2d 552 (C. A. 2).

<sup>19</sup> Such employees would also be covered as engaged in the production of goods for commerce. See *Levis v. Florida Power & Light Co.*, 154 F. 2d 751 (C. A. 5); *Walling v. Connecticut Co.*, 154 F. 2d 552 (C. A. 2); also § 776.21 (b).

<sup>20</sup> *New Mexico Public Service Co. v. Engel*, 145 F. 2d 636, 640 (C. A. 10).

<sup>21</sup> The employee may, however, be exempt from the overtime provisions of the act under section 13 (b) (1). See Part 782 of this chapter.

And as a general rule, employees who are regularly engaged in traveling across State lines in the performance of their duties (as distinguished from merely going to and from their homes or lodgings in commuting to a work place) are engaged in commerce and covered by the act.<sup>22</sup> On the other hand, it is equally plain that an employee who, in isolated or sporadic instances, happens to cross a State line in the course of his employment, which is otherwise intrastate in character, is not, for that sole reason, covered by the act. Nor would a man who occasionally moves to another State in order to pursue an essentially local trade or occupation there become an employee "engaged in commerce" by virtue of that fact alone. Doubtful questions arising in the area between the two extremes must be resolved on the basis of the facts in each individual case.

**§ 776.13 Commerce crossing international boundaries.** Under the act, as amended, an employee engaged in "trade, commerce, transportation, transmission, or communication" between any State and any place outside thereof is covered by the act regardless of whether the "place outside" is another State or is a foreign country or is some other place. Before the amendment to section 3 (b) which became effective January 25, 1950, employees whose work related solely to the flow of commerce into a State from places outside it which were not "States" as defined in the act were not employees engaged in "commerce" for purposes of the act, although employees whose work was concerned with the flow of commerce out of the State to such places were so engaged.<sup>23</sup> This placed employees of importers in a less favorable position under the act than the employees of exporters. This inequality was removed by the amendment to section 3 (b).<sup>24</sup> Accordingly, employees performing work in connection with the importation of goods from foreign countries are engaged "in commerce" and covered by the act, as amended. The coverage of such employees, as of those performing work in connection with the exportation of goods to foreign countries, is determined by the same principles as in the case of employees whose work is connected with goods procured from or sent to other States.

#### ENGAGING IN "THE PRODUCTION OF GOODS FOR COMMERCE"

**§ 776.14 Elements of "production" coverage.** Sections 6 and 7 of the act, as has been noted, cover not only employees who are engaged "in commerce" as explained above, but also "each" and "any" employee who is engaged in the "production" of "goods" for "commerce". What employees are so engaged can be determined only by reference to the

<sup>22</sup> *Reck v. Zarnocay*, 264 App. Div. 520, 36 N. Y.S. 2d 394; *Colbeck v. Dairyland Creamery Co.*, 17 N. W. 2d 262 (S. Ct. S. D.).

<sup>23</sup> The definition of "commerce" previously referred to commerce "from any State to any place outside thereof." The amendment substituted "between" for "from" and "and" for "to" in this clause.

<sup>24</sup> H. Mgrs. St., 1949, pp. 13, 14.

very comprehensive definitions which Congress has supplied to make clear what is meant by "production," by "goods," and by "commerce" as those words are used in sections 6 and 7. In the light of these definitions, there are three interrelated elements of coverage to be considered in determining whether an employee is engaged in the production of goods for commerce: (a) There must be "production"; (b) such production must be of "goods"; (c) such production of goods must be "for commerce"; all within the meaning of the act.<sup>1</sup> The three elements of "production" coverage are discussed in order in the sections following.

§ 776.15 "Production"—(a) *The statutory provisions.* The activities constituting "production" within the meaning of the phrase "engaged in . . . production of goods for commerce" are defined in the act<sup>2</sup> as follows:

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

The act bars from interstate commerce "any" goods in the production of which "any" employee was employed in violation of the minimum-wage or overtime-pay provisions,<sup>3</sup> and provides that in determining, for purposes of this provision, whether an employee was employed in the production of such goods—

• • • proof that any employee was employed in any place of employment where goods shipped or sold in commerce were pro-

<sup>1</sup> These elements need not be considered if the employee would be covered in any event because engaged "in commerce" under the principles discussed in preceding sections of this part.

<sup>2</sup> Act, sec. 3 (j). This definition is also applicable in determining coverage of the child labor provisions of the act. See Part 450 of this chapter.

<sup>3</sup> Act, sec. 15 (a) (1). The only exceptions are stated in the section itself, which provides that "it shall be unlawful for any person—(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or section 7, or in violation of any regulation or order of the Administrator issued under section 14; except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of the Act, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful."

duced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.<sup>4</sup>

(b) *General scope of "production" coverage.* The statutory provisions quoted in paragraph (a) of this section, show that for purposes of the act, wherever goods are being produced for interstate or foreign commerce, the employees who are covered as "engaged in the production" of such goods, include, in general, all those whose work may fairly be said to be a part of their employer's production of such goods,<sup>5</sup> and include those whose work is closely related and directly essential thereto,<sup>6</sup> whether employed by the same or a different employer. (See §§ 776.17-776.19.) Typically, but not exclusively, this includes that large group of employees engaged in mines, oil fields, quarries, and manufacturing, processing, or distributing plants where goods are produced for commerce. The employees covered as engaged in "production" are not limited, however, to those engaged in actual physical work on the product itself or to those in the factories, mines, warehouses, or other places of employment where goods intended for commerce are being produced. If the requisite relationship to production of such goods is present, an employee is covered, regardless of whether his work brings him into actual contact with such goods or into the establishments where they are produced, and even though his employer may be someone other than the producer of the goods for commerce.<sup>7</sup> As explained more fully in the sections following, the act's "production" coverage embraces many employees who serve productive enterprises in capacities which do not involve working directly on goods produced but which are nevertheless closely related and directly essential to successful operations in producing goods for interstate or foreign commerce. And as a general rule, in conformity with the provisions of the act quoted in paragraph (a) of this section, an employee will be considered to be within the general coverage of the wage and hours provisions if he is working in a place of employment where goods sold or shipped in interstate commerce or foreign commerce are being produced, unless the employer maintains the burden of establishing that the employee's functions are so definitely segregated from such production that they should not be regarded as closely related and directly essential thereto.<sup>8</sup>

<sup>4</sup> Act, sec. 15 (b).

<sup>5</sup> *Borden Co. v. Borella*, 325 U. S. 679; *Armour & Co. v. Wantock*, 323 U. S. 136. See also paragraph (c) of this section.

<sup>6</sup> *Kirschbaum v. Walling*, 316 U. S. 517; *Roland Electrical Co. v. Walling*, 326 U. S. 657; *H. Mgrs. St.*, 1949, p. 14; *Sen. St.* 1949 Cong. Rec., p. 15372.

<sup>7</sup> *Borden Co. v. Borella*, 325 U. S. 679; *Roland Electrical Co. v. Walling*, 326 U. S. 657; *Kirschbaum v. Walling*, 316 U. S. 517; *Walton v. Southern Package Corp.*, 320 U. S. 540.

<sup>8</sup> *Guess v. Montague*, 140 F. 2d 500 (C. A. 4). Cf. *Armour & Co. v. Wantock*, 323 U. S. 136.

§ 776.16 *Employment in "producing, . . . or in any other manner working on" goods—(a) Coverage in general.* Employees employed in "producing, manufacturing, mining, handling, or in any other manner working on" goods (as defined in the act, including parts or ingredients thereof) for interstate or foreign commerce are considered actually engaged in the "production" of such goods, within the meaning of the act. Such employees have been within the general coverage of the wage and hours provisions since enactment of the act in 1938, and remain so under the Fair Labor Standards Amendments of 1949.<sup>9</sup>

(b) *Activities constituting actual "production" under statutory definition.* It will be noted that the actual productive work described in this portion of the definition of "produced" includes not only the work involved in making the products of mining, manufacturing, or processing operations, but also includes "handling, transporting, or in any other manner working on" goods. This is so, regardless of whether the goods are to be further processed or are so-called "finished goods." The Supreme Court has stated that this language of the definition brings within the scope of the term "production," as used in the act, "every step in putting the subject to commerce in a state to enter commerce," including "all steps, whether manufacture or not, which lead to readiness for putting goods into the stream of commerce," and "every kind of incidental operation preparatory to putting goods into the stream of commerce."<sup>10</sup>

However, where employees of a common carrier, by handling or working on goods, accomplish the interstate transit or movement in commerce itself, such handling or working on the goods is not "production." The employees in that event are covered only under the phrase "engaged in commerce."<sup>11</sup>

(c) *Physical labor.* It is clear from the principles stated in paragraphs (a) and (b), above, that employees in shipping rooms, warehouses, distribution yards, grain elevators, etc., who sort, screen, grade, store, pack, label, address or otherwise handle or work on goods in preparation for shipment of the goods out of the State are engaged in the production of goods for commerce within

<sup>9</sup> *H. Mgrs. St.*, 1949, p. 14; *Sen. St.*, 1949 Cong. Rec. p. 15372.

<sup>10</sup> *Western Union Tel. Co. v. Lenroot*, 323 U. S. 490. See, to the same effect, *Walling v. Friend*, 156 F. 2d 429 (C. A. 8); *Walling v. Comet Carriers*, 151 F. 2d 107 (C. A. 2); *Phillips v. Star Overall Dry Cleaning Laundry Co.*, 149 F. 2d 416 (C. A. 2); certiorari denied 327 U. S. 780; *Walling v. Griffin Cartage Co.*, 62 F. Supp. 396, affirmed in 153 F. 2d 587 (C. A. 6). For examples, see paragraphs (c) and (d) of this section. Employees who are not engaged in the actual production activities described in section 3 (j) of the act are not engaged in "production" unless their work is "closely related" and "directly essential" to such production. See §§ 776.17-776.19.

<sup>11</sup> *Western Union Tel. Co. v. Lenroot*, 323 U. S. 490. For examples, see paragraph (c) of this section.

the meaning of the act.<sup>12</sup> The same has been held to be true of employees doing such work as handling ingredients (scrap iron) of steel used in building ships which will move in commerce;<sup>13</sup> handling and caring for livestock at stockyards where the livestock are destined for interstate shipment as such<sup>14</sup> or as meat products;<sup>15</sup> handling or transporting containers to be used in shipping products interstate;<sup>16</sup> transporting, within a single State, oil to a refinery<sup>17</sup> or lumber to a mill,<sup>18</sup> where products of the refinery or mill will be sent out of the State; transporting parts or ingredients of other types of goods or the finished goods themselves between processors, manufacturers, and storage places located in a single State, where goods so transported will leave the State in the same or an altered form;<sup>19</sup> and repairing or otherwise working on ships,<sup>20</sup> vehicles,<sup>21</sup> machinery,<sup>22</sup> clothing,<sup>23</sup> or other goods which may be expected to move in interstate commerce.

These examples are, of course, illustrative rather than exhaustive. Some of them relate to situations in which the handling or working on goods for interstate or foreign commerce may constitute not only "production for commerce" but also engaging "in commerce" because the activities are so closely related to commerce as to be for all practical purposes a part of it.<sup>24</sup> However, as noted in

paragraph (b) of this section, handling or working on goods constitutes engagement in "commerce" only and not engagement in "production" of the goods when it is done by employees of a common carrier and is itself the means whereby interstate transit or movement of the goods by the carrier is accomplished. Thus, employees of a telegraph company preparing messages for interstate transmission, television cameramen photographing sports or news events for simultaneous viewing at television receiving sets in other States, and railroad train crews or truck drivers hauling goods from one State to another are not engaged in the "production" of goods by virtue of such activities, but are covered by the act only as employees "engaged in commerce."

(d) *Nonmanual work.* The "production" described by the phrase "producing . . . or in any other manner working on" goods includes not only the manual, physical labor involved in processing and working on the tangible products of a producing enterprise, but equally the administration, planning, management, and control of the various physical processes together with the accompanying accounting and clerical activities.<sup>25</sup> An enterprise producing goods for commerce does not accomplish the actual production of such goods solely with employees performing physical labor on them. Other employees may be equally important in actually producing the goods, such as employees who conceive and direct policies of the enterprise; employees who dictate, control, and coordinate the steps involved in the physical production of goods; employees who maintain detailed and meticulous supervision of productive activities; and employees who direct the purchase of raw materials and supplies, the methods of production, the amounts to be produced, the quantity and character of the labor, the safety measures, the budgeting and financing, the labor policies, and the maintenance of the plants and equipment. (For regulations governing exemption from the wage and hours provisions of employees employed in a bona fide executive, administrative, or professional capacity, see Part 541 of this chapter.) Employees who perform these and similar activities are an integral part of the coordinated productive pattern of a modern industrial organization. The Supreme Court of the United States has held that from a productive standpoint and for purposes of the act the employees who perform such activities "are actually engaged in the production of goods for commerce just as much as are those who process and work on the tangible products" in the manufacturing plants or other producing facilities of the enterprise.<sup>26</sup>

§ 776.17 *Employment in a "closely related process or occupation directly essential to" production of goods—(a) Coverage in general.* Employees who

are not actually "producing . . . or in any other manner working on" goods for commerce are, nevertheless, engaged in the "production" of such goods within the meaning of the act and therefore within its general coverage if they are employed "in any closely related process or occupation directly essential to the production thereof, in any State."<sup>27</sup> Prior to the Fair Labor Standards Amendments of 1949, this was true of employees engaged "in any process or occupation necessary to the production" of goods for commerce. The amendments deleted the word "necessary" and substituted the words "closely related" and "directly essential" contained in the present law. The words "directly essential" were adopted by the Conference Committee in lieu of the word "indispensable" contained in the amendments as first passed by the House of Representatives. Under the amended language, an employee is covered if the process or occupation in which he is employed is both "closely related" and "directly essential" to the production of goods for interstate or foreign commerce.

The legislative history shows that the new language in the final clause of section 3 (j) of the act is intended to narrow, and to provide a more precise guide to, the scope of its coverage with respect to employees (engaged neither "in commerce" nor in actually "producing or in any other manner working on" goods for commerce) whose coverage under the act formerly depended on whether their work was "necessary" to the production of goods for commerce. Some employees whose work might meet the "necessary" test are now outside the coverage of the act because their work is not "closely related" and "directly essential" to such production; others, however, who would have been excluded if the indispensability of their work to production had been made the test, remain within the coverage under the new language.<sup>28</sup>

The scope of coverage under the "closely related" and "directly essential" language is discussed in the paragraphs following. In the light of explanations provided by managers of the legislation in Congress<sup>29</sup> including expressions of their intention to leave undisturbed the areas of coverage established under court decisions containing similar language,<sup>30</sup> this new language should provide a more

<sup>12</sup> If coverage of an employee is determined to exist on either basis, it is, of course, not necessary to determine whether the employee would also be covered on the other ground. See *Warren-Bradshaw Drilling Co. v. Hall*, 124 F. 2d 42 (C. A. 5), affirmed in 317 U. S. 88.

<sup>13</sup> H. Mfrs. St., 1949, p. 14; Sen. St., 1949 Cong. Rec. p. 15372; Statement of the Chairman of the Committee on Education and Labor explaining the conference agreement to the House of Representatives, 1949 Cong. Rec., p. 15135; colloquy between Representatives McConnell and Javits, 1949 Cong. Rec., p. 15129; cf. statements of Representative Barden (1949 Cong. Rec. p. 15131), Representative Brehm (1949 Cong. Rec., p. 15132), and Senator Taft (1950 Cong. Rec., p. A-1162).

<sup>14</sup> See *Kirschbaum Co. v. Walling*, 316 U. S. 517.

<sup>15</sup> *McComb v. Wyandotte Furn. Co.*, 169 F. 2d 766 (C. A. 8); *Walling v. Mutual Wholesale Food & Supply Co.*, 141 F. 2d 331 (C. A. 8); *West Kentucky Coal Co. v. Walling*, 153 F. 2d 582 (C. A. 6); *Walling v. Home Loose Leaf Tobacco Warehouse Co.*, 51 F. Supp. 914 (E. D. Ky.); *Walling v. Yeakley*, 3 W. H. Cases 27, modified and affirmed in 140 F. 2d 830 (C. A. 10); *Shain v. Armour & Co.*, 50 F. Supp. 907 (W. D. Ky.); *Walling v. McCracken County Peach Growers Assn.*, 50 F. Supp. 900 (W. D. Ky.). See also *Clyde v. Broderick*, 144 F. 2d 348 (C. A. 10).

<sup>16</sup> *Bracey v. Luray*, 138 F. 2d 8 (C. A. 4).

<sup>17</sup> *Walling v. Friend*, 156 F. 2d 429 (C. A. 8).

<sup>18</sup> *Fleming v. Swift & Co.*, 41 F. Supp. 825, affirmed in 131 F. 2d 249 (C. A. 7); *McComb v. Benz Co.*, 9 W. H. Cases 277 (S. D. Ind.).

<sup>19</sup> *Walling v. Villume Box & Lbr. Co.*, 58 F. Supp. 150 (D. Minn.).

<sup>20</sup> *Mid-Continent Pipe Line Co. v. Hargrave*, 129 F. 2d 655 (C. A. 10); *Boiling v. R. J. Allison Co., Inc.*, 4 W. H. Cases 500 (N. D. Okla.).

<sup>21</sup> *Hanson v. Lagerstrom*, 133 F. 2d 120 (C. A. 8).

<sup>22</sup> *Walling v. Griffin Cartage Co.*, 62 F. Supp. 696, affirmed in 153 F. 2d 587 (C. A. 6); *Walling v. Comet Carriers*, 151 F. 2d 107 (C. A. 2).

<sup>23</sup> *Slover v. Wathen*, 140 F. 2d 258 (C. A. 4).

<sup>24</sup> *Hertz Drivervelf Stations v. United States*, 150 F. 2d 923 (C. A. 8); *Walling v. Armbruster*, 51 F. Supp. 166 (W. D. Ark.); *McComb v. Weller*, 9 W. H. Cases 53 (W. D. Tenn.), 17 Labor Cases (CCH) par. 65, 332; *Walling v. Strum & Sons*, 6 W. H. Cases 131 (D. N. J.), 11 Labor Cases (CCH) par. 63, 249.

<sup>25</sup> *Engelbreton v. Albrecht*, 150 F. 2d 602 (C. A. 7); *Guess v. Montague*, 140 F. 2d 500 (C. A. 4).

<sup>26</sup> *Walling v. Belikoff*, 147 F. 2d 1008 (C. A. 2); *Campbell v. Zavalo*, 243 Ala. 361, 10 So. 2d 29; *Phillips v. Star Overall Dry Cleaning Laundry Co.*, 149 F. 2d 416 (C. A. 2), certiorari denied 327 U. S. 780.

<sup>27</sup> *Slover v. Wathen*, 140 F. 2d 258 (C. A. 4); *Hertz Drivervelf Stations v. United States*, 150 F. 2d 923 (C. A. 8); *Engelbreton v. Albrecht*, 150 F. 2d 602 (C. A. 7); *Walling v. Strum & Sons*, 6 W. H. Cases 131 (D. N. J.).

definite guide to the intended coverage under the final clause of section 3 (j) than did the earlier "necessary" test. However, while the coverage or noncoverage of many employees may be determined with reasonable certainty, no precise line for inclusion or exclusion may be drawn; there are bound to be borderline problems of coverage under the new language which cannot be finally determined except by authoritative decisions of the courts.

(b) *Meaning of "closely related" and "directly essential".* The terms "closely related" and "directly essential" are not susceptible of precise definition; as used in the act they together describe a situation in which, under all the facts and circumstances, the process or occupation in which the employee is employed bears a relationship to the production of goods for interstate or foreign commerce (1) which may reasonably be considered close, as distinguished from remote or tenuous, and (2) in which the work of the employee directly aids production in a practical sense by providing something essential to the carrying on in an effective, efficient, and satisfactory manner of an employer's operations in producing such goods.\*

Not all activities that are "closely related" to production will be "directly essential" to it, nor will all activities "directly essential" to production meet the "closely related" test. For example, employees employed by an employer in an enterprise, or portion thereof, which is devoted to the production of goods for interstate or foreign commerce will, as a general rule, be considered engaged in work "closely related" to such production, but some such employees may be outside the coverage of the act because their work is not "directly essential" to production of the goods. (For a discussion of this point and specific illustrations, see § 776.18 (b).) Similarly, there are some situations in which an employee performing work "directly essential" to production by an employer other than his own may not be covered because the kind of work and the circumstances under which it is performed show the employee's activities to be so much a part of an essentially local business operated by his employer that it would be unrealistic to consider them "closely related" to the productive activities of another. (For a more detailed discussion and specific illustrations, see § 776.19.)

(c) *Determining whether activities are "closely related" and "directly essential".*

(1) The close relationship of an activity to production, which may be tested by a wide variety of relevant factors, is to be distinguished from its direct essentiality to production, which is dependent solely on considerations of need or function of the activity in the productive enterprise. The words "directly essential" refer only to the relationship of the employee's work to production. Work "directly essential" to production remains so no matter whose employee does it and regardless of the nature or purpose of the

employer's business. It seems clear, on the other hand, that the criteria for determining whether a process or occupation is "closely related" to production cannot be limited to those which show its closeness in terms of need or function.<sup>11</sup> It may also be important to ascertain, for instance, whether the activity of the employee bears a relationship to production which is close in terms either of the place or the time of its performance, or in terms of the purposes with which the activity is performed by the particular employer through the employee, or in terms of relative directness or indirectness of the activity's effect in relation to such production, or in terms of employment within or outside the productive enterprise. (Examples of the application of these principles may be found in §§ 776.18 and 776.19.)

(2) The determination of whether an activity is closely or only remotely related to production may thus involve consideration of such factors, among others, as the contribution which the activity makes to the production; who performs the activity; where, when and how it is performed in relation to the production to which it pertains; whether its performance is with a view to aiding production or for some different purpose; how immediate or delayed its effect on production is; the number and nature of any intervening operations or processes between the activity and the production in question; and, in an appropriate case, the characteristics and purposes of the employer's business.<sup>12</sup> Moreover, in some cases where particular work "directly essential" to production is performed by an employer other than the producer, the degree of such essentiality may be a significant factor in determining whether the work is also "closely related" to such production. (See § 776.19.)

No one of the factors listed above is necessarily controlling, and other factors may assume importance. Some may have more significance than others in particular cases, depending upon the facts. They are merely useful guides for determining whether the total situation in respect to a particular process or occupation demonstrates the requisite "close and immediate tie" to the production of goods for interstate or foreign commerce. It is the sum of the factors relevant to each case that determines whether the particular activity is "closely related" to such production.

<sup>11</sup> Of course, if the need or function of the activity in production is such that the tie between them is both close and immediate (cf. *Kirschbaum Co. v. Walling*, 316 U. S. 517), as for example, where an employee is employed to repair electric motors which are used in factories in the production of goods for commerce, this fact may be sufficient to show both the direct essentiality and the close relationship of the employee's work to production. See *Roland Electrical Co. v. Walling*, 326 U. S. 657. See also § 776.19 and *H. Mgrs. St.*, 1949, pp. 14, 15.

<sup>12</sup> Cf. *Kirschbaum Co. v. Walling*, 316 U. S. 517; *10 E. 40th St. Bldg. v. Callus*, 325 U. S. 578; *Schulte Co. v. Gangl*, 328 U. S. 108; *Borden Co. v. Borella*, 325 U. S. 679; *Armour & Co. v. Wantock*, 323 U. S. 126.

<sup>13</sup> See *Kirschbaum Co. v. Walling*, 316 U. S. 517.

The application of these principles is further explained and illustrated in §§ 776.18 and 776.19.

(3) In determining whether an activity is "directly essential" to production, a practical judgment is required as to whether, in terms of the function and need of such activity in successful production operations, it is "essential" and "directly" so to such operations. These are questions of degree; "even" "directly" essential activities (for example, machinery repair, custodial, and clerical work in a producing plant) (for other examples, see §§ 776.18 (a) and 776.19) will vary in the degree of their essentiality and in the directness of the aid which they provide to production. An activity may be "directly essential" without being indispensable in the sense that it cannot be done without; yet some activities which, in a long chain of causation, might be indispensable to production, such as the manufacture of brick for a new factory, or even the construction of the new factory itself, are not "directly" essential.<sup>14</sup> An activity which provides something essential to meet the immediate needs of production, as, for example, the manufacture of articles like machinery or tools or dies for use in the production of goods for commerce (see § 776.19 (b)) will, however, be no less "directly" essential because intervening activities must be performed in the distribution, transportation, and installation of such products before they can be used in production.<sup>15</sup>

The application of these principles is further explained and illustrated in §§ 776.18 and 776.19.

§ 776.18 *Employees of producers for commerce—(a) Covered employments illustrated.* Some illustrative examples of the employees employed by a producer of goods for interstate or foreign commerce who are or are not engaged in the "production" of such goods within the meaning of the act have already been given. Among the other employees of such a producer, doing work in connection with his production of goods for commerce, who are covered because their work, if not actually a part of such production, is "closely related" and "directly essential" to it,<sup>16</sup> are such employees as bookkeepers, stenographers, clerks, accountants and auditors, employees doing payroll, timekeeping and time study work, draftsmen, inspectors, testers and research workers, industrial safety men, employees in the personnel, labor relations, advertising, promotion, and public relations activities of the producing enterprise, work instructors, and other office and white collar workers; employees maintaining, servicing, re-

<sup>14</sup> Cf. *10 E. 40th St. Bldg. v. Callus*, 325 U. S. 578; *Sen. St. 95 Cong. Rec.*, October 19, 1949, at 15372. For discussion of coverage of employees engaged in construction, see subpart B of this part.

<sup>15</sup> See *Walling v. Hamner*, 64 F. Supp. 690 (W. D. Va.).

<sup>16</sup> See *H. Mgrs. St.*, 1942, p. 14; *Sen. St.*, 1949 *Cong. Rec.*, p. —. See also *Borden Co. v. Borella*, 325 U. S. 679.

\* See *H. Mgrs. St.*, 1949, pp. 14, 15; *Sen. St.*, 1949 *Cong. Rec.*, p. 15372; cf. *Kirschbaum Co. v. Walling*, 316 U. S. 517.

pairing or improving the buildings," machinery, equipment, vehicles, or other facilities used in the production of goods for commerce," and such custodial and protective employees as watchmen, guards, firemen, patrolmen, caretakers, stockroom workers, and warehousemen; and transportation workers bringing supplies, materials, or equipment to the producer's premises, removing slag or other waste materials therefrom, or transporting materials or other goods, or performing such other transportation activities, as the needs of production may require. These examples are intended as illustrative, rather than exhaustive of the group of employees of a producer who are "engaged in the production" of goods for commerce, within the meaning of the act, and who are therefore entitled to its wage and hours benefits unless specifically exempted by some provision of the act.

(b) *Employments not directly essential to production distinguished.* Employees of a producer of goods for commerce are not covered as engaged in such production if they are employed solely in connection with essentially local activities which are undertaken by the employer independently of his productive operations or at most as a dispensable, collateral incident to them and not with a view to any direct function which the activities serve in production. It is clear, for example, that an employee would not be covered merely because he works as a domestic servant in the home of an employer whose factory produces goods for commerce, even though he is carried on the factory payroll. To illustrate further, a producer may engage in essentially local activities as a landlord, restaurateur, or merchant in order to utilize the opportunity for separate and additional profit from such ventures or to provide a convenient means of meeting personal needs of his employees. Employees exclusively employed in such activities of the producer are not engaged in work "closely related" and "directly essential" to his production of goods for commerce merely because they provide residential, eating, or other living facilities for his employees who are engaged in the production of such goods." Such employees are to be distinguished from employees like cooks, cookees, and bull cooks in isolated lumber camps or mining camps, where the operation of a cook-house may in fact be "closely related" and "directly essential" or, indeed, in-

dispensable to the production of goods for commerce."

Some specific examples of the application of these principles may be helpful. Such services as watching, guarding, maintaining or repairing the buildings, facilities, and equipment used in the production of goods for commerce are "directly essential" as well as "closely related" to such production as it is carried on in modern industry." But such services performed with respect to private dwellings tenanted by employees of the producer, as in a mill village, would not be "directly essential" to production merely because the dwellings were owned by the producer and leased to his employees." Similarly, employees of the producer or of an independent employer who are engaged only in maintaining company facilities for entertaining the employer's customers, or in providing food, refreshments, or recreational facilities, including restaurants, cafeterias and snack bars, for the producer's employees in a factory, or in operating a children's nursery for the convenience of employees who leave young children there during working hours, would not be doing work "directly essential" to the production of goods for commerce."

**§ 776.19 Employees of independent employers meeting needs of producers for commerce—(a) General statement.**

(1) If an employee of a producer of goods for commerce would not, while performing particular work, be "engaged in the production" of such goods for purposes of the Act under the principles heretofore stated, an employee of an independent employer performing the same work on behalf of the producer would not be so engaged. Conversely, as shown in the paragraphs following, the fact that employees doing particular work on behalf of such a producer are employed by an independent employer rather than by the producer will not take them outside the coverage of the Act if their work otherwise qualifies as the "production" of "goods" for "commerce."

(2) Of course, in view of the act's definition of "goods" as including "any part or ingredient" of goods (see § 776.20 (a), (c)), employees of an independent employer providing other employers with materials or articles which become parts or ingredients of goods produced by such other employers for commerce are actually employed by a producer of goods for commerce and their coverage under the

act must be considered in the light of this fact. For example, an employee of such an independent employer who handles or in any manner works on the goods which become parts or ingredients of such other producer's goods is engaged in actual production of goods (parts or ingredients) for commerce, and the question of his coverage is determined by this fact without reference to whether his work is "closely related" and "directly essential" to the production by the other employer of the goods in which such parts or ingredients are incorporated. So also, if the employee is not engaged in the actual production of such parts or ingredients, his coverage will depend on whether, as an employee of a producer of goods for commerce, his work is "closely related" and "directly essential" to the production of the parts or ingredients, rather than on the principles applicable in determining the coverage of employees of an independent employer who does not himself produce the goods for commerce."

(3) Where the work of an employee would be "closely related" and "directly essential" to the production of goods for commerce if he were employed by a producer of the goods, the mere fact that the employee is employed by an independent employer will not justify a different answer." This does not necessarily mean that such work in every case will remain "closely related" to production when performed by employees of an independent employer. It will, of course, be as "directly essential" to production in the one case as in the other. (See § 776.17 (c).) But in determining whether an employee's work is "closely" or only remotely related to the production of goods for commerce by an employer other than his own, the nature and purpose of the business in which he is employed and in the course of which he performs the work may sometimes become important.

Such factors may prove decisive in particular situations where the employee's work, although "directly essential" to the production of goods by someone other than his employer, is not far from the borderline between those activities which are "directly essential" and those which are not. In such a situation, it may appear that his performance of the work is so much a part of an essentially local business carried on by his employer without any intent or purpose of aiding production of goods for commerce by others that the work, as thus performed, may not reasonably be considered "closely related" to such production." In other situations, however, where the degree to which the work is directly essential to production by the producer is greater, the fact that the

\* No distinction of economic or statutory significance can be drawn between such work in a building where the production of goods is carried on physically and in one where such production is administered, managed, and controlled. *Borden Co. v. Borella*, 325 U. S. 679.

\* Such mechanics and laborers as machinists, carpenters, electricians, plumbers, steamfitters, plasterers, glaziers, painters, metal workers, bricklayers, hod carriers, roofers, stationary engineers, their apprentices and helpers, elevator starters and operators, messengers, janitors, charwomen, porters, handy men, and other maintenance workers would come within this category.

\* H. Mgrs. St., 1949, pp. 14, 15; see also *Brogan v. National Surety Co.*, 246 U. S. 257; Cf. Sen. St., 1949 Cong. Rec., p. 15372.

\* See *Brogan v. National Surety Co.*, 246 U. S. 257; *Consolidated Timber Co. v. Womack*, 132 F. 2d 101 (C. A. 9); *Hanson v. Lagerstrom*, 133 F. 2d 120 (C. A. 8); cf. H. Mgrs. St., 1949, pp. 14, 15 and Sen. St., 1949 Cong. Rec., p. 15372.

\* H. Mgrs. St., 1949, p. 14; Sen. St., 1949 Cong. Rec., p. 15372; *Kirschbaum v. Walling*, 316 U. S. 517; *Borden Co. v. Borella*, 325 U. S. 679; *Walton v. Southern Package Corp.*, 320 U. S. 540; *Armour & Co. v. Wantock*, 325 U. S. 126.

\* H. Mgrs. St., 1949, pp. 14, 15; *Morris v. Beaumont Mfg. Co.*, 84 F. Supp. 909 (W. D. S. C.); cf. *Wilson v. Reconstruction Finance Corp.*, 158 F. 2d 564 (C. A. 5), certiorari denied, 331 U. S. 810. Cf. *Brogan v. National Surety Co.*, 246 U. S. 257; *Consolidated Timber Co. v. Womack*, 132 F. 2d 101 (C. A. 9); *Hanson v. Lagerstrom*, 133 F. 2d 120 (C. A. 8).

\* Cf. H. Mgrs. St., 1949, pp. 14, 15.

\* *Bracey v. Luray*, 138 F. 2d 8 (C. A. 4); *Walling v. Peoples Packing Co.*, 132 F. 2d 236 (C. A. 10), certiorari denied 318 U. S. 774; *Mid-Continent Pipe Line Co. v. Hargrave*, 129 F. 2d 655 (C. A. 10); *Walling v. W. D. Haden Co.*, 153 F. 2d 196 (C. A. 5).

\* See *Kirschbaum v. Walling*, 316 U. S. 517; *Roland Electrical Co. v. Walling*, 326 U. S. 657; *Farmers Reservoir Co. v. McComb*, 337 U. S. 755; H. Mgrs. St., 1949, p. 14. See also Sen. St., 1949 Cong. Rec., p. 15372.

\* H. Mgrs. St., 1949, pp. 14, 15; 10 E. 40th St. Bldg. Co. v. Callus, 325 U. S. 578.

independent employer is engaged in a business having local aspects may not be sufficient to negative a close relationship between his employees' work and such production.<sup>1</sup> And it seems clear that where the independent employer operates a business which, unlike that of the ordinary local merchant, is directed to providing producers with materials or services directly essential to the production of their goods for commerce, the activities of such a business may be found to be "closely related" to such production.<sup>2</sup> In such event, all the employees of the independent employer whose work is part of his integrated effort to meet such needs of producers are covered as engaged in work closely related and directly essential to production of goods for commerce.<sup>3</sup>

(b) *Extent of coverage under "closely related" and "directly essential" clause illustrated.* In the paragraphs following, the principles discussed above are illustrated by reference to a number of typical situations in which goods or services are provided to producers of goods for commerce by the employees of independent employers. These examples are intended not only to answer questions as to coverage in the particular situations discussed, but to provide added guideposts for determining whether employees in other situations are doing work closely related and directly essential to such production.

(1) Many local merchants sell to local customers within the same State goods which do not become a part or ingredient (as to parts or ingredients, see § 776.20 (c)) of goods produced by any of such customers. Such a merchant may sell to his customers, including producers for commerce, such articles, for example, as paper towels, or record books, or paper

clips, or filing cabinets, or automobiles and trucks, or paint, or hardware, not specially designed for use in the production of other goods.

Where such a merchant's business is essentially local in nature, selling its goods to the usual miscellany of local customers without any particular intent or purpose of aiding production of other goods for commerce by such customers, the local merchant's employees are not doing work both "closely related" and "directly essential" to production, so as to bring them within the reach of the act, merely "because some of the customers . . . are producing goods for interstate (or foreign) commerce."<sup>4</sup> Therefore, if they do not otherwise engage "in commerce" (see §§ 776.8-776.13 and 776.31, 776.33) or in the "production" of goods for commerce, they are not covered by the act.

In such a situation, moreover, even where the work done by the employees is "directly essential" to such production by their employer's customers, it may not meet the "closely related" test. But the more directly essential to the production of goods for commerce such work is, the more likely it is that a close and immediate tie between it and such production exists which will be sufficient, notwithstanding the local aspects of the employer's business, to bring the employees within the coverage of the act on the ground that their work is "closely related" as well as "directly essential" to production by the employer's customers.

Such a close and immediate tie with production exists, for example, where the independent employer, through his employees, supplies producers of goods for commerce with things as directly essential to production as electric motors or machinery or machinery parts for use in producing the goods of a manufacturer, for mining operations, or for production of oil, or for other production operations, or the power, water, or fuel required in such production operations, to mention a few typical examples.<sup>5</sup> The fact that these needs of producers are supplied through the agency of businesses having certain local aspects cannot alter the obvious fact that the employees of such businesses who supply these needs are doing work both "closely related" and "directly essential" to production by the employer's customers. As the United States Supreme Court has stated: "Such sales and services must be immediately available to . . . [the] customers or their production will stop."<sup>6</sup>

<sup>1</sup> H. Mgrs. St., 1949, pp. 14, 15.

<sup>2</sup> See H. Mgrs. St., 1949, p. 14; Sen. St., 195 Cong. Rec., October 19, 1949, at 15372; Statement of the Chairman of the Committee on Education and Labor explaining the conference agreement to the House of Representatives, 1949 Cong. Rec., p. 15135; *Roland Electrical Co. v. Walling*, 326 U. S. 657; *Reynolds v. Salt River Valley Water Users Assn.*, 143 F. 2d 863 (C. A. 9); *Meeker Coop. Light & Power Assn. v. Phillips*, 158 F. 2d 698 (C. A. 8); *Walling v. Hammer*, 64 F. Supp. 690 (W. D. Va.); *Holland v. Amoskeag Machine Co.*, 44 F. Supp. 884 (D. N. H.); *Princeton Mining Co. v. Veach*, 63 N. E. 2d 306 (Ind. App.).

<sup>3</sup> *Roland Electrical Co. v. Walling*, 326 U. S. 657, 664.

It should be noted that employees of independent employers providing such essential goods and services to producers will not be removed from coverage because an unsegregated portion of their work is performed for customers other than producers of goods for commerce. For example, employees of public utilities, furnishing gas, electricity or water to firms within the State engaged in manufacturing, mining, or otherwise producing goods for commerce, are subject to the act notwithstanding such gas, electricity or water is also furnished to consumers who do not produce goods for commerce.<sup>7</sup>

(2) On similar principles, employees of independent employers providing to manufacturers, mining companies, or other producers such goods used in their production of goods for commerce as tools and dies, patterns, designs, or blueprints are engaged in work "closely related" as well as "directly essential" to the production of the goods for commerce; the same is true of employees of an independent employer engaged in such work as producing and supplying to a steel mill, sand meeting the mill's specifications for cast shed, core, and molding sands used in the production by the mill of steel for commerce.<sup>8</sup> Another illustration of such covered work, according to managers of the bill in Congress, is that of employees of industrial laundry and linen supply companies serving the needs of customers engaged in manufacturing or mining goods for commerce.<sup>9</sup>

On the other hand, the legislative history makes it clear that employees of a "local architectural firm" are not brought within the coverage of the act by reason of the fact that their activities "include the preparation of plans for the alteration of buildings within the State which are used to produce goods for interstate commerce." Such activities are not "directly essential" enough to the production of goods in the buildings to establish the required close relationship between their performance and such production when they are performed by employees of such a "local" firm.<sup>10</sup> Of course, this result is even more apparent where the activities of the employees of such a "local" business may not be viewed as "directly essential" to production. It is clear, for example, that Congress did not believe "employees of an independently owned and operated restaurant" should be brought under the coverage of the Act because the restaurant is "located in a factory." To establish coverage on "production" grounds, an employee must be "shown to have a

<sup>4</sup> *Meeker Coop. Light & Power Assn. v. Phillips*, 158 F. 2d 698 (C. A. 8); H. Mgrs. St., 1949, p. 14. For another illustration see H. Mgrs. St., 1949, p. 26, with reference to industrial laundries.

<sup>5</sup> H. Mgrs. St., 1949, p. 14; Sen. St., 1949 Cong. Rec., p. 15372.

<sup>6</sup> *Walling v. Amidon*, 153 F. 2d 159 (C. A. 10); Sen. St., 95 Cong. Rec., October 19, 1949, at 15372.

<sup>7</sup> H. Mgrs. St., 1949, p. 26; Sen. St., 95 Cong. Rec., October 19, 1949, at 15372. See also *Koerner v. Associated Linen Laundry Suppliers*, 270 App. Div. 985, 62 N. Y. S. 2d 774.

<sup>8</sup> H. Mgrs. St., 1949, p. 15. See also *McComb v. Turpin*, 81 F. Supp. 86, 1948 (D. Md.).

<sup>1</sup> H. Mgrs. St., 1949, p. 14; *Kirschbaum Co. v. Walling*, 316 U. S. 517; *Warren-Bradshaw Drilling Co. v. Hall*, 317 U. S. 88.

<sup>2</sup> See H. Mgrs. St., p. 14, and 10 E. 40th St. Bldg. Co. v. Callus, 325 U. S. 578.

<sup>3</sup> *Kirschbaum Co. v. Walling*, 316 U. S. 517 (stationary engineers and firemen, watchmen, elevator operators, electricians, carpenters, carpenters' helper, engaged in maintaining and servicing loft building for producers); *Roland Electrical Co. v. Walling*, 326 U. S. 657 (foremen, trouble shooters, mechanics, helpers, and office employees of company selling and servicing electric motors, generators, and equipment for commercial and industrial firms); *Meeker Coop. Light & Power Assn. v. Phillips*, 158 F. 2d 698 (C. A. 8) (outside employees and office employees of light and power company serving producers); *Walling v. New Orleans Private Patrol Service*, 57 F. Supp. 143 (E. D. La.) (guards, watchmen, and office employees of company providing patrol service for producers); *Walling v. Thompson*, 65 F. Supp. 686 (S. D. Cal.) (installation and service men, shopmen, bookkeeper, salesman, dispatcher of company supplying burglar alarm service to producers).

In H. Mgrs. St., 1949, p. 14, it is said, "Employees engaged in such maintenance, custodial, and clerical work will remain subject to the act, notwithstanding they are employed by an independent employer performing such work on behalf of the manufacturer, mining company, or other producer for commerce. All such employees perform activities that are closely related and directly essential to the production of goods for commerce."

closer and a more direct relationship to the producing \* \* \* activity" than this.

(3) Some further examples may help to clarify the line to be drawn in such cases. The work of employees constructing a dike to prevent the flooding of an oil field producing oil for commerce would clearly be work not only "directly essential" but also "closely related" to the production of the oil. However, employees of a materialman quarrying, processing, and transporting stone to the construction site for use in the dike would be doing work too far removed from production of the oil to be considered "closely related" thereto.<sup>18</sup> Similarly, the sale of sawmill equipment to a producer of mine props which are in turn sold to mines within the same State producing coal for commerce is too remote from production of the coal to be considered "closely related" thereto, but production of the mine props, like the manufacture of tools, dies, or machinery for use in producing goods for commerce, has such a close and immediate tie with production of the goods for commerce that it meets the "closely related" (as well as the "directly essential") test.<sup>19</sup>

(4) A further illustration of the distinction between work that is, and work that is not, "closely related" to the production of goods for commerce may be found in situations involving activities which are directly essential to the production by farmers of farm products which are shipped to other States. Employees of an employer furnishing to such farmers, within the same State, water for the irrigation of their crops or power for use in their agricultural production for commerce are engaged in work "closely related" as well as "directly essential" to the production of goods for commerce.<sup>20</sup> This appears equally true of producing or supplying feed for poultry and livestock or seed for crops, to be used by farmers within the State in the production of goods that are shipped out of the State.<sup>21</sup> Like water, such commodities enter directly into the very product that moves in commerce and are indispensable to its production. On the other hand, it is apparent from the legis-

lative history that Congress did not regard as "closely related" to the production of farm products for commerce the activities of employees in a local fertilizer plant producing fertilizer for use by farmers within the same State to improve the productivity of the land used in growing such products.<sup>22</sup> Since fertilizer is ordinarily thought to be assimilated by the soil rather than by the crop and, in the ordinary case, may be considered less directly essential to production of farm products than water, livestock feed, or seed, without which such production would not be possible, it seems probable that the withdrawal from coverage of such employees (who were held "necessary" to production of goods or commerce under the act prior to the 1949 amendment<sup>23</sup> rests wholly or in part on the principles stated in paragraphs (a) (3) and (b) (1) of this section.

(5) Managers of the legislation in Congress stated that all maintenance, custodial, and clerical employees of manufacturers, mining companies, and other producers of goods for commerce perform activities that are both "closely related" and "directly essential" to the production of goods for commerce, and that the same is true of employees of an independent employer performing such maintenance, custodial, and clerical work "on behalf of" such producers.

Typical of the employees in this covered group are those repairing or maintaining the machinery or buildings used by the producer in his production of goods for commerce and employees of a watchman or guard or patrol or burglar alarm service protecting the producer's premises.<sup>24</sup> On the other hand, the House managers of the bill made it clear that employees engaged in cleaning windows or cutting grass at the plant of a producer of goods for commerce were not intended to be included as employees doing work "closely related" to production on "on behalf of" the producer where they were employed by a "local window-cleaning company" or a "local independent nursery concern," merely because the customers of the employer happen to include producers of goods for commerce.<sup>25</sup> A similar view was expressed with respect to employees of a "local exterminator service firm" working wholly within the State exterminating pests in private homes, in a variety of local establishments, "and also in buildings within the State used to produce goods for interstate commerce."<sup>26</sup>

§ 776.20 "Goods"—(a) The statutory provision. An employee is covered by the wage and hours provisions of the act if

<sup>18</sup> H. Mgrs. St., 1949, p. 14. Cf. *Bayer v. Courtemanche*, 76 F. Supp. 193 (D. Conn.), See also § 776.18 (b).

<sup>19</sup> See *E. C. Schroeder Co. v. Clifton*, 153 F. 2d 385 (C. A. 10) (opinion of Judge Phillips) and H. Mgrs. St., 1949, p. 15.

<sup>20</sup> See *Walling v. Hamner*, 84 F. Supp. 690 (W. D. Va.), and statement of the Chairman of the Committee on Education and Labor explaining the conference agreement to the House of Representatives, 1949 Cong. Rec., p. 15135.

<sup>21</sup> See *Farmers Reservoir Co. v. McComb*, 337 U. S. 755; *Reynolds v. Salt River Valley Water Users Assn.*, 143 F. 2d 863 (C. A. 9); *Meeker Coop. Light & Power Assn. v. Phillips*, 158 F. 2d 698 (C. A. 8).

Reference should be made to section 13 (a) (6) of the act providing an exemption from the wage and hours provisions for employees employed in agriculture and for certain employees of nonprofit and share-crop irrigation companies.

<sup>22</sup> The wage and hours provisions would not apply, however, to employees of retail feed or seed establishments qualifying for exemption under section 13 (a) (2), (4) of the act.

<sup>23</sup> H. Mgrs. St., 1949, p. 15.

<sup>24</sup> *McComb v. Super-A Fertilizer Works*, 165 F. 2d 824 (C. A. 1).

<sup>25</sup> See H. Mgrs. St., 1949, p. 14; Sen. St. 1949 Cong. Rec. p. 15372; *Kirschbaum Co. v. Walling*, 316 U. S. 517; *Noland Electrical Co. v. Walling*, 326 U. S. 657; *Walling v. Sondock*, 132 F. 2d 77 (C. A. 5); *Holland v. Amoskeag Machine Co.*, 44 F. Supp. 884 (D. N. H.).

For a discussion of the coverage of building service and maintenance employees in multi-tenant buildings, see Subpart B of this part.

<sup>26</sup> H. Mgrs. St., 1949, page 15.

he is engaged in the "production" (as explained in §§ 776.15 through 776.19) "for commerce" (as explained in § 776.21) of anything defined as "goods" in section 3 (1) of the act. This definition is:

"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.

(b) "Articles or subjects of commerce of any character." It will be observed that "goods" as defined in the act are not limited to commercial goods or articles of trade, or, indeed, to tangible property, but include "articles or subjects of commerce of any character" (emphasis supplied).<sup>27</sup> It is well settled that things such as "ideas," \* \* \* orders, and intelligence" are "subjects of commerce." Telegraphic messages have, accordingly, been held to be "goods" within the meaning of the act.<sup>28</sup> Other articles or subjects of commerce which fall within the definition of "goods" include written materials such as newspapers, magazines, brochures, pamphlets, bulletins, and announcements;<sup>29</sup> written reports, fiscal and other statements and accounts, correspondence, lawyers' briefs and other documents;<sup>30</sup> advertising, motion picture, newspaper and radio copy, artwork, and manuscripts for publication;<sup>31</sup> sample books;<sup>32</sup> letterheads, envelopes, shipping tags, labels, check books, blank books, book covers, advertising circulars and candy wrap-

<sup>27</sup> As pointed out in *Lenroot v. Western Union Tel. Co.*, 141 F. 2d 400 (C. A. 2), the legislative history shows that the definition was originally narrower, and that subjects of commerce were added by a Senate amendment.

<sup>28</sup> *Western Union Tel. Co. v. Lenroot*, 323 U. S. 490.

<sup>29</sup> *Mabee v. White Plains Pub. Co.*, 327 U. S. 178; *Yunker v. Abbe Employment Agency*, 32 N. Y. S. 2d 715; *Berry v. 34 Irving Place Corp.*, 52 F. Supp. 875 (S. D. N. Y.); *Uilo v. Smith*, 62 F. Supp. 757, affirmed in 177 F. 2d 101 (C. A. 2); see also opinion of the four dissenting justices in *10 E. 40th St. Bldg. v. Callus*, 325 U. S. at p. 588.

<sup>30</sup> Waste paper collected for shipment in commerce is goods. See *Fleming v. Schiff*, 1 W. H. Cases 893 (D. Colo.), 15 Labor Cases (CCH) par. 60,864.

<sup>31</sup> *Phillips v. Meeker Coop. Light & Power Assn.*, 63 F. Supp. 733, affirmed in 158 F. 2d 698 (C. A. 8); *Lofther v. First Nat. Bank of Chicago*, 48 F. Supp. 692 (N. D. Ill.). See also *Rausch v. Wolf*, 72 F. Supp. 658 (N. D. Ill.). There are other cases (e. g., *Kelly v. Ford*, *Bacon & Davis*, 162 F. 2d 555 (C. A. 3), and *Bozant v. Bank of New York*, 156 F. 2d 787 (C. A. 2)) which suggest that such things are "goods" only when they are articles of trade. Although the Supreme Court has not settled the question, such a view appears contrary to the express statutory definitions of "goods" and "commerce."

<sup>32</sup> *Robert v. Henry Phipps Estate*, 156 F. 2d 958 (C. A. 2); *Baldwin v. Emigrant Industrial Sav. Bank*, 150 F. 2d 524 (C. A. 2), certiorari denied 326 U. S. 787; *Bittner v. Chicago Daily News Ptg. Co.*, 4 W. H. Cases 837 (N. D. Ill.), 29 Labor Cases (CCH) par. 62,479; *Schinck v. 386 Fourth Ave. Corp.*, 49 N. Y. S. 2d 872.

<sup>33</sup> *Walling v. Higgins*, 47 F. Supp. 856 (E. D. Pa.).

pers.<sup>11</sup> Insurance policies are "goods" within the meaning of the act;<sup>12</sup> so are bonds, stocks, bills of exchange, bills of lading, checks, drafts, negotiable notes and other commercial paper.<sup>13</sup> "Goods" includes gold<sup>14</sup> livestock;<sup>15</sup> poultry and eggs;<sup>16</sup> vessels;<sup>17</sup> vehicles;<sup>18</sup> aircraft;<sup>19</sup> garments being laundered or rented;<sup>20</sup> ice;<sup>21</sup> containers, as, for example, cigar boxes or wrapping paper and packing materials for other goods shipped in commerce;<sup>22</sup> electrical energy or power, gas, etc.;<sup>23</sup> and by-products,<sup>24</sup> to mention only a few illustrations of the articles or subjects of "trade, commerce, transportation, transmission, or communication among the several States, or between any State and any place outside thereof" which the act refers to as "goods." The act's definitions do not, however, include as "goods" such things as dams, river improvements, highways and viaducts, or railroad lines.<sup>25</sup>

(c) "Any part or ingredient." Section 3 (1) draws no distinction between goods and their ingredients and in fact defines goods to mean "goods \* \* \* or any part or ingredient thereof." The fact that goods are processed or changed in form by several employers before going into interstate or foreign commerce does not affect the character of the original product as "goods" produced for commerce. Thus, if a garment manufacturer sends goods to an independent contractor within the State to have them sewn, after which he further processes and ships them in interstate commerce, the division of the production functions between the two employers does not alter the fact that the employees of the independent contractor are actually producing ("working on") the "goods" (parts or ingredients of goods) which enter the channels of commerce.<sup>26</sup>

<sup>11</sup> *McAdams v. Connelly*, 8 W. H. Cases 498 (W. D. Ark.), 16 Labor Cases (CCH) par. 64,963; *Walling v. Lacy*, 51 F. Supp. 1002 (D. Colo.); *Tobin v. Grant*, 8 W. H. Cases 361 (N. D. Cal.). See also *Walling v. Steving*, 5 W. H. Cases 1009 (N. D. Ill.), 11 Labor Cases (CCH) par. 63,998.

<sup>12</sup> *Darr v. Mutual Life Ins. Co.*, 169 F. 2d 262 (C. A. 2), certiorari denied 335 U. S. 871.

<sup>13</sup> *Bozant v. Bank of New York*, 156 F. 2d 787 (C. A. 2).

<sup>14</sup> *Walling v. Halle Gold Mines*, 138 F. 2d 102 (C. A. 4); *Fox v. Summit King Mines*, 143 F. 2d 926 (C. A. 9).

<sup>15</sup> *Walling v. Friend*, 156 F. 2d 429 (C. A. 8).

<sup>16</sup> *Walling v. DeSoto Creamery & Produce Co.*, 51 F. Supp. 938 (D. Minn.).

<sup>17</sup> *Slover v. Wathen*, 140 F. 2d 258 (C. A. 4).

<sup>18</sup> *Hertz Drivelserv Stations v. United States*, 150 F. 2d 923 (C. A. 8).

<sup>19</sup> *Jackson v. Northwest Airlines*, 75 F. Supp. 32 (D. Minn.).

<sup>20</sup> *Phillips v. Star Overall Dry Cleaning Laundry Co.*, 149 F. 2d 416 (C. A. 2).

<sup>21</sup> *Hamlet Ice Co. v. Fleming*, 127 F. 2d 165 (C. A. 4); *Atlantic Co. v. Walling*, 131 F. 2d 518 (C. A. 5).

<sup>22</sup> *Enterprise Box Co. v. Fleming*, 125 F. 2d 897 (C. A. 5), certiorari denied, 316 U. S. 704; *Fleming v. Schiff*, 1 W. H. Cases 883 (D. Colo.), 5 Labor Cases (CCH) par. 60, 864.

<sup>23</sup> *Walling v. Connecticut Co.*, 62 F. Supp. 733 (D. Conn.), affirmed 154 F. 2d 552 (C. A. 2).

<sup>24</sup> *Walling v. Peoples Packing Co.*, 152 F. 2d 236 (C. A. 10), certiorari denied 318 U. S. 774. See also § 776.32.

<sup>25</sup> *Engelbrechtsen v. Albrecht*, 150 F. 2d 802 (C. A. 7); *Kenny v. Wigton-Abbott Corp.*, 80 F. Supp. 480 (D. N. J.).

<sup>26</sup> *Schulte Co. v. Gangi*, 328 U. S. 108.

Similarly, if a manufacturer of buttons sells his products within the State to a manufacturer of shirts, who ships the shirts in interstate commerce, the employees of the button manufacturer would be engaged in the production of goods for commerce; or, if a lumber manufacturer sells his lumber locally to a furniture manufacturer who sells furniture in interstate commerce, the employees of the lumber manufacturer would likewise come within the scope of the act. Any employee who is engaged in the "production" (as explained in § 776.15) of any part or ingredient of goods produced for trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof is engaged in the production of "goods" for commerce within the meaning of the act.<sup>27</sup>

(d) *Effect of the exclusionary clause.* The exclusionary clause in the definition that excepts "goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof," is intended to protect ultimate consumers other than producers, manufacturers, or processors of the goods in question<sup>28</sup> from the "hot goods" provisions of section 15 (a) (1) of the act.<sup>29</sup> Section 15 (a) (1) makes it unlawful for any person "to transport \* \* \* (or) \* \* \* ship \* \* \* in commerce \* \* \* any goods" produced in violation of the wage and hours standards established by the act. (Exceptions are made subject to specified conditions for common carriers and for certain purchasers acting in good faith reliance on written statements of compliance. See footnote 41 to § 776.15 (a).) By defining "goods" in section 3 (1) so as to exclude goods after their delivery into the actual physical possession of the ultimate consumer (other than a producer, manufacturer, or processor thereof) Congress made it clear that it did not intend to hold the ultimate consumer as a violator of section 15 (a) (1) if he should transport "hot goods" across a State line.<sup>30</sup> Thus, if a person purchases a pair of shoes for himself from a retail store<sup>31</sup> and carries the shoes across a State line, the purchaser is not guilty of a violation of section 15 (a) (1) if the shoes were

<sup>27</sup> *Roland Electrical Co. v. Walling*, 326 U. S. 637; *Bracy v. Luray*, 138 F. 2d 8 (C. A. 4); *Walling v. W. J. Haden Co.*, 153 F. 2d 196 (C. A. 5); *Mid-Continent Pipe Line Co. v. Hargrave*, 129 F. 2d 655 (C. A. 10); *Boling v. Allison*, 4 W. H. Cases 500 (N. D. Okla.); *Hanson v. Lagerstrom*, 133 F. 2d 120 (C. A. 8); *Walling v. Comet Carriers*, 151 F. 2d 107 (C. A. 2); *Walling v. Griffin Cartage Co.*, 62 F. Supp. 396, affirmed in 153 F. 2d 587 (C. A. 6); *Walling v. Kerr*, 47 F. Supp. 852 (E. D. Pa.).

<sup>28</sup> *Southern Advance Bag & Paper Co. v. United States*, 133 F. 2d 449 (C. A. 5); *Phillips v. Star Overall Dry Cleaning Laundry Co.*, 149 F. 2d 485 (C. A. 2), certiorari denied 327 U. S. 780.

<sup>29</sup> *Jackson v. Northwest Airlines*, 70 F. Supp. 501.

<sup>30</sup> *Hamlet Ice Co. v. Fleming*, 127 F. 2d 165 (C. A. 4), certiorari denied 317 U. S. 634.

<sup>31</sup> Note that the retail or service establishment exemption in section 13 (a) (2) does not protect the retail store from a violation of the "hot goods" provision if it sells in interstate commerce goods produced in violation of sections 6 or 7.

produced in violation of the wage or hours provisions of the statute. But the fact that goods produced for commerce lose their character as "goods" after they come into the actual physical possession of an ultimate consumer who does not further process or work on them does not affect their character as "goods" while they are still in the actual physical possession of the producer, manufacturer or processor who is handling or working on them with the intent or expectation that they will subsequently enter interstate or foreign commerce.<sup>32</sup> Congress clearly did not intend to permit an employer to avoid the minimum wage and maximum hours standards of the act by making delivery within the State into the actual physical possession of the ultimate consumer who transports or ships the goods outside of the State. Thus, employees engaged in building a boat for delivery to the purchaser at the boatyard are considered within the coverage of the act if the employer, at the time the boat is being built, intends, hopes, or has reason to believe that the purchaser will sail it outside the State.<sup>33</sup>

§ 776.21 "For" commerce—(a) *General principles.* As has been made clear previously, where "goods" (as defined in the act) are produced "for commerce," every employee engaged in the "production" (as explained in §§ 776.15 through 776.19) of such goods (including any part or ingredient thereof) is within the general coverage of the wage and hours provisions of the act. Goods are produced for "commerce" if they are produced for "trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof."<sup>34</sup> Goods are produced "for" such commerce where the employer intends, hopes, expects, or has reason to believe that the goods or any unsegregated part of them will move (in the same or in an altered form or as a part or ingredient of other goods) in such interstate or foreign commerce.<sup>35</sup> If such movement of the goods in commerce can be reasonably anticipated by the employer when his employees perform work defined in the act as "production" of such goods, it makes no difference whether he himself, or a subsequent owner or possessor of the goods, put the goods in interstate or foreign commerce.<sup>36</sup> The fact that goods do move in interstate or foreign commerce is strong evidence that the employer intended, hoped, expected, or had reason to believe that they would so move.

Although it is generally well understood that goods are produced "for" commerce if they are produced for move-

<sup>32</sup> See cases cited above in footnotes 41, 42, 43, this section.

<sup>33</sup> *Walling v. Lowe*, 5 W. H. Cases 937 (S. D. Fla.), 10 Labor Cases (CCH) 63,033. See also *Walling v. Armbruster*, 51 F. Supp. 166 (W. D. Ark.); *Joshua Hendy Corp. v. Mills*, 169 F. 2d 898 (C. A. 9); *St. Johns River Shipbuilding Co. v. Adams*, 164 F. 2d 1012 (C. A. 5).

<sup>34</sup> Fair Labor Standards Act, section 3 (b).

<sup>35</sup> *United States v. Darby*, 312 U. S. 100; *Warren-Bradshaw Drilling Co. v. Hall*, 317 U. S. 88; *Schulte Co. v. Gangi*, 328 U. S. 108.

<sup>36</sup> *Schulte Co. v. Gangi*, 328 U. S. 108; *Warren-Bradshaw Drilling Co. v. Hall*, 317 U. S. 88. See paragraph (d) of this section.

ment in commerce to points outside the State, questions have been raised as to whether work done on goods may constitute production "for" commerce even though the goods do not ultimately leave the State. As is explained more fully in the paragraphs following, there are certain situations in which this may be true, either under the principles above stated (see paragraph (c) of this section), or because it appears that the goods are produced "for" commerce in the sense that they are produced for use directly in the furtherance, within the particular State, of the actual movement to, from, or across such State of interstate or foreign commerce. (See paragraph (b) of this section.)

(b) *Goods produced for direct furtherance of interstate movement.* (1) The act's definition of "commerce," as has been seen, describes a movement, among the several States or between any State and any outside place, of "trade, commerce, transportation, transmission, or communication." Whenever goods are produced "for" such movement, such goods are produced "for commerce," whether or not there is any expectation or reason to anticipate that the particular goods will leave the State.

(2) The courts have held that particular goods are produced "for" commerce when they are produced with a view to their use, whether within or without the State, in the direct furtherance of the movement of interstate or foreign commerce. Thus, it is well settled that ice is produced "for" commerce when it is produced for use by interstate rail or motor carriers in the refrigeration or cooling of the equipment in which the interstate traffic actually moves, even though the particular ice may melt before the equipment in which it is placed leaves the State.<sup>12</sup> The goods (ice) produced for such use "enter into the very means of transportation by which the burdens of traffic are borne."<sup>13</sup> The same may be said of electrical energy produced and sold within a single State for such uses as lighting and operating signals on railroads and at airports to guide interstate traffic, lighting and operating radio stations transmitting programs interstate, and lighting and message transmission of telephone and telegraph companies.<sup>14</sup> Similar principles would apply to the production of fuel or water for use in the operation of railroads with which interstate and foreign commerce is carried on; the production of radio or television scripts which provide the basis for programs transmitted interstate; the production of telephone and telegraph poles for use

in the necessary repair, maintenance, or improvement of interstate communication systems; the production of crushed rock, ready-mixed concrete, cross-ties, concrete culvert pipe, bridge timbers, and similar items for use in the necessary repair, maintenance, or improvement of railroad roadbeds and bridges which serve as the instrumentalities over which interstate traffic moves.

Similarly, in the case of highways, pipe lines, and waterways which serve as instrumentalities of interstate and foreign commerce, the production of goods for use in the direct furtherance of the movement of commerce thereon would be the production of goods "for commerce." The production of materials "for use in the necessary maintenance, repair, or improvement of the instrumentality so that the flow of commerce will not be impeded or impaired is an example of this. Thus, stone or ready-mixed concrete, crushed rock, sand, gravel and similar materials for bridges or dams; like materials or bituminous aggregate or oil for road surfacing; concrete or galvanized pipe for road drainage; bridge planks and timbers; paving blocks; and other such materials may be produced "for" commerce even though they do not leave the State.

(3) This does not, however, necessarily mean that the production of such materials within a State is always production "for" commerce when the materials are used in the same State for the maintenance, repair, or improvement of highways or other instrumentalities carrying interstate traffic. In determining whether the production is actually "for" commerce in a situation where there is no reason to believe that the goods will leave the State, a practical judgment is required. Some illustrations may be helpful.

On the one hand, there are situations where there is little room for doubt that the goods are produced "for" commerce in the sense that the goods are intended for the direct furtherance of the movement of commerce over the instrumentalities of transportation and communication. The most obvious illustration is that of special-purpose goods such as cross-ties for railroads, telephone or telegraph poles, or concrete pipe designed for highway use. Another illustration is sand and gravel for highway repair or reconstruction which is produced from a borrow pit opened expressly for that purpose, or from the pits of an employer whose business operations are conducted wholly or in substantial part with the intent or purpose of filling highway contracts. (The fact that a substantial portion of the employer's gross income is derived from supplying such materials for highway repair and reconstruction would be one indication that a substantial part of his business is directed to the purpose of meeting such needs of commerce.)

<sup>12</sup> *Walling v. Staffen*, 5 W. H. Cases 1002 (W. D. N. Y.), 11 Labor Cases (CCH) par. 63, 102; *McComb v. Carter*, 8 W. H. Cases 498 (E. D. Va.), 16 Labor Cases (CCH) par. 64, 964. *Contra*, *McComb v. Trimmer*, 85 F. Supp. 565 (D. N. J.). Cf. *Engelbrecht v. Albrecht*, 150 F. 2d 602 (C. A. 7).

On the other hand, there are situations where materials or other goods used in maintaining, repairing, or reconstructing instrumentalities of commerce are produced and supplied by local materialmen under circumstances which may require the conclusion that the goods are not produced "for" commerce. Thus, a materialman may be engaged in an essentially local business serving the usual miscellany of local customers, without any substantial part of such business being directed to meeting the needs of highway repair or reconstruction. If, on occasion, he happens to produce or supply some materials which are used within the State to meet such highway needs, and he does so as a mere incident of his essentially local business, the Administrator will not consider that his employees handling or working on such materials are producing goods "for" commerce. This is, rather, a typically local activity of the kind the act was not intended to cover. The same may be said of the production of ice by an essentially local ice plant where the only basis of coverage is the delivery of ice for the water cooler in the community railroad station. The employees producing ice in the ice plant for local use would not by reason of this be covered as engaged in the production of goods "for" commerce.

Other illustrations might be given but these should emphasize the essential distinction which must be kept in mind. Borderline cases will, of course, arise. In each such case the facts must be examined and a determination made as to whether or not the goods may fairly be viewed as produced "for" use in the direct furtherance of the movement of interstate or foreign commerce, and thus "for" commerce.

(c) *Controlling effect of facts at time "production" occurs.* (1) Whether employees are engaged in the production of goods "for" commerce depends upon circumstances as they exist at the time the goods are being produced, not upon some subsequent event. Thus, if a lumber manufacturer produces lumber to fill an out-of-State order, the employees working on the lumber are engaged in the production of goods for commerce and within the coverage of the act's wage and hours provisions, even though the lumber does not ultimately leave the State because it is destroyed by fire before it can be shipped. Similarly, employees drilling for oil which the employer expects to leave the State either as crude oil or refined products are engaged in the production of goods for commerce while the drilling operations are going on and are entitled to be paid on that basis notwithstanding some of the wells drilled may eventually prove to be dry holes.<sup>15</sup>

(2) On the other hand, if the lumber manufacturer first mentioned produces lumber to fill the order of a local contractor in the expectation that it will be used to build a schoolhouse within the State, the employees producing the lumber are not engaged in the production of goods "for" commerce and are not

<sup>15</sup> *Culver v. Bell & Lofland*, 146 F. 2d 29 (C. A. 9); see also *Warren-Bradshaw Drilling Co. v. Hall*, 317 U. S. 88.

<sup>12</sup> *Fleming v. Atlantic Co.*, 40 F. Supp. 654, affirmed in 131 F. 2d 518 (C. A. 5).

<sup>13</sup> *Hamlet Ice Co. v. Fleming*, 127 F. 2d 165 (C. A. 4), certiorari denied 317 U. S. 634; *Atlantic Co. v. Walling*, 131 F. 2d 518 (C. A. 5); *Chapman v. Home Ice Co.*, 136 F. 2d 353 (C. A. 6) certiorari denied 320 U. S. 761; *Southern United Ice Co. v. Hendrix*, 153 F. 2d 689 (C. A. 6); *Hansen v. Salinas Valley Ice Co.*, 62 Cal. App. 357, 144 P. 2d 896.

<sup>14</sup> *Hamlet Ice Co. v. Fleming*, 127 F. 2d 165 (C. A. 4).

<sup>15</sup> *Lewis v. Florida Power & Light Co.*, 154 F. 2d 751 (C. A. 5); see also *Walling v. Connecticut Co.*, 154 F. 2d 552 (C. A. 2).

## RULES AND REGULATIONS

covered by the act. This would remain true notwithstanding the contractor subsequently goes bankrupt and the lumber is sold to a purchaser who moves it to another State; the status of the employees for purposes of coverage cannot in this situation, any more than in the others, be retroactively changed by the subsequent event.

(d) *Goods disposed of locally to persons who place them in commerce.* It is important to remember that if, at the time when employees engage in activities which constitute "production of goods" within the meaning of the act, their employer intends, hopes, expects, or has reason to believe that such goods will be taken or sent out of the State by a subsequent purchaser or other person into whose possession the goods will come, this is sufficient to establish that such employees are engaged in the production of such goods "for" commerce and covered by the act. Whether the producer passes title to the goods to another within the State is immaterial.<sup>66</sup> The goods are produced "for" commerce in such a situation whether they are purchased f. o. b. the factory and are taken out of the State by the purchaser, or whether they are sold within the State to a wholesaler or retailer or manufacturer or processor who in turn sells them, either in the same form or after further processing, in interstate or foreign commerce. The same is true where the goods worked on by the producer's employees are not owned by the producer and are returned, after the work is done, to the possession of the owner who takes or sends them out of the State.<sup>67</sup> Similarly, employees are engaged in the production of goods "for" commerce when they are manufacturing, handling, working on, or otherwise engaging in the production of boxes, barrels, bagging, crates, bottles, or other containers, wrapping or packing material which their employer has reason to believe will be used to hold the goods of other producers which will be sent out of the State in such containers or wrappings. It makes no difference that such other producers are located in the same State and that the containers are sold and delivered to them there.<sup>68</sup>

<sup>66</sup> *Hamlet Ice Co. v. Fleming*, 127 F. 2d 165 (C. A. 4), certiorari denied 317 U. S. 634; *Bracey v. Lauray*, 138 F. 2d 8 (C. A. 4).

<sup>67</sup> *Schulte Co. v. Gangi*, 328 U. S. 108; *Warren-Bradshaw Drilling Co. v. Hall*, 317 U. S. 83; *Walling v. Kerr*, 47 F. Supp. 852 (E. D. Pa.).

<sup>68</sup> *Enterprise Box Co. v. Fleming*, 125 F. 2d 897 (C. A. 5), certiorari denied 316 U. S. 704; *Dice v. Maddrix*, 144 F. 2d 584 (C. A. 4), affirmed 324 U. S. 697; *Walling v. Burch*, 5 W. H. Cases 323 (S. D. Ga.); 9 Labor Cases (CCH) par. 62, 613; *Fleming v. Schiff*, 1 W. H. Cases 893 (D. Colo.), 5 Labor Cases (CCH) par. 60, 864.

It should be noted that where empty containers are purchased, loaded, or transported within a single State as a part of their movement, as empty containers, out of the State, an employee engaged in such purchasing, loading, or transporting operations is covered by the act as engaged "in commerce." *Atlantic Co. v. Weaver*, 150 F. 2d 843 (C. A. 4); *Klotz v. Ippolito*, 40 F. Supp. 422 (S. D. Tex.); *Orange Crush Bottling Co. v. Tuggle*, 70 Ga. App. 144, 27 S. E. 2d 769.

Signed at Washington, D. C., this 4th day of May, 1950.

WM. R. McCOMB,  
Administrator.

[F. R. Doc. 50-4119; Filed, May 16, 1950;  
8:46 a. m.]

## TITLE 6—AGRICULTURAL CREDIT

## Chapter IV—Production and Marketing Administration and Commodity Credit Corporation, Department of Agriculture

## Subchapter B—Export and Diversion Programs

## PART 524—HONEY

## Correction

In F. R. Document 50-4015, appearing at page 2793, of the issue for Thursday, May 11, 1950, in the application Under Honey Diversion Program delete the title "Director, Fruit and Vegetable Branch".

## TITLE 31—MONEY AND FINANCE: TREASURY

## Chapter II—Fiscal Service, Department of the Treasury

[1950 Dept. Circ. 655, Supp. 6]

## PART 211—DELIVERY OF CHECKS AND WARRANTS TO ADDRESSES OUTSIDE THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS

## WITHHOLDING OF DELIVERY OF CHECKS OR WARRANTS

MAY 10, 1950.

Section 211.3 (a) of Department Circular No. 655, dated March 19, 1941 (31 CFR Cum. Supp. 211.3 (a)), as amended, is hereby further amended to read as follows:

§ 211.3 *Withholding of delivery of checks or warrants.* (a) The Secretary of the Treasury hereby determines that postal, transportation, or banking facilities in general or local conditions in the Russian Zone of Occupation of Germany; the Russian Sector of Occupation of Berlin, Germany; and in Albania and Bulgaria are such that there is not a reasonable assurance that a payee in those areas will actually receive checks or warrants drawn against funds of the United States, or agencies or instrumentalities thereof, and be able to negotiate the same for full value.

Except to the extent they have been authorized by appropriate unrevoked licenses, or are authorized by specific license issued by the Department of Justice, Office of Alien Property, remittances by United States Government agencies from any accounts in which a German or Japanese interest existed on or before December 31, 1946, will continue to be restricted by Executive Order No. 8389, as amended, and rules and regulations issued pursuant thereto, including in particular General Ruling 11A, as amended. Attention is directed to the provisions of Public Law No. 622, 79th Congress, 2d Session, which prohibits among other things, payments of veterans' benefits to German or Japanese

citizens or subjects residing in Germany or Japan.

(Sec. 5, 54 Stat. 1087; 31 U. S. C. 127)

[SEAL]

JOHN W. SNYDER,  
Secretary of the Treasury.

[F. R. Doc. 50-4195; Filed, May 16, 1950;  
8:01 a. m.]

## TITLE 39—POSTAL SERVICE

## Chapter I—Post Office Department

## PART 18—SETTLEMENT OF ACCOUNTS: LEGAL PROCEEDINGS: COMPROMISES

## COMPROMISE OF JUDGMENT

Amend § 18.51 *Compromise of judgment* (39 CFR 18.51) to read as follows:

§ 18.51 *Compromise of judgment.* Whenever a judgment is obtained for a debt or damages due the Post Office Department, and it satisfactorily appears that such judgment, or so much thereof as remains unpaid, cannot be collected by due process of law, the Department of Justice may compromise such judgment, and accept in satisfaction less than the full amount thereof.

(R. S. 161, 396, secs. 304, 309, 42 Stat. 24, 25; 5 U. S. C. 22, 369. Interprets or applies R. S. 295, as amended; 31 U. S. C. 115)

[SEAL]

J. M. DONALDSON,  
Postmaster General.

[F. R. Doc. 50-4176; Filed, May 16, 1950;  
8:47 a. m.]

## PART 36—UNMAILABLE MATTER

## PART 51—VILLAGE DELIVERY

## PART 97—STAR, STEAMSHIP, AND STEAMBOAT ROUTES, AND VEHICLE SERVICE IN CITIES

## MISCELLANEOUS AMENDMENTS

a. In § 36.12 *Mailing of pistols, revolvers, and other firearms* (39 CFR 36.12) amend paragraph (a) to read as follows:

(a) *Restrictions and penalty.* Pistols, revolvers, and other firearms capable of being concealed on the person are non-mailable and shall not be deposited in or carried by the mails or delivered by any postmaster, letter carrier, or other person in the Postal Service. Such articles may be conveyed in the mails, under such regulations as the Postmaster General shall prescribe, for use in connection with their official duty, to officers of the Army, Navy, Air Force, Coast Guard, Marine Corps, or Organized Reserve Corps; to officers of the National Guard or Militia of a State, Territory, or District; to officers of the United States or of a State, Territory, or District whose official duty is to serve warrants of arrest or commitments; to employees of the Postal Service; to officers and employees of enforcement agencies of the United States; and to watchmen engaged in guarding the property of the United States, a State, Territory, or District. Such articles also may be conveyed in the mails to manufacturers of firearms or bona fide dealers therein in customary trade shipments, including such articles for repairs or replacement of parts, from one to the

other, under such regulations as the Postmaster General shall prescribe.

Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail according to the direction thereon, or at any place to which it is directed to be delivered by the person to whom it is addressed, any pistol, revolver, or firearm declared non-mailable by this section, shall be fined not more than \$1,000 or imprisoned not more than two years, or both.

(R. S. 161, 396, secs. 304, 309, 42 Stat. 24, 25; 5 U. S. C. 22, 369. Interprets or applies 62 Stat. 782, as amended; 18 U. S. C. and Sup., 1715)

b. In § 51.1 *Village delivery* (39 CFR 51.1) amend paragraph (a) (1) to read as follows:

(1) Village mail delivery may be established under such regulations as the Postmaster General may prescribe, in towns and villages having post offices of the third class that are not by law entitled to free-delivery service. The operation by the Post Office Department of village delivery service in second-class post offices shall be discontinued.

NOTE: See § 137.48 for additional provisions, and effective date of Public Law 431.

(R. S. 161, 396, sec. 9, 37 Stat. 559, as amended; secs. 304, 309, 42 Stat. 24, 25; 5 U. S. C. 22, 369, 39 U. S. C. and Sup., 153)

c. In Part 97 (39 CFR, Part 97) make the following changes:

1. Amend § 97.2 *Contracts for service by air because of impracticability of surface transportation* (39 CFR 97.2) to read as follows:

§ 97.2 *Contracts for service by air because of impracticability or inadequacy of surface transportation*—(a) *Action by Postmaster General*. Whenever he shall find it to be in the public interest, because of the nature of the terrain, or the impracticability or inadequacy of surface transportation, and where the cost thereof is reasonably compatible with the service to be provided, the Postmaster General may award contracts for the transportation by aircraft upon star routes of any or all classes of mail (including but not limited to air mail and air parcel post), payment for such service to be made from the appropriation for inland transportation by star routes: *Provided*, That all laws and regulations not in conflict with this section governing star routes shall be applicable to contracts made under the authority of this section: *Provided further*, That the provisions of title IV of the Civil Aeronautics Act of 1938, approved June 23, 1938 (52 Stat. 973), as amended, other than sections 407, 408, 409, 412, 413, 414, and 416 thereof shall not apply to the transportation of mail under this section: *Provided further*, That prior to advertising for bids for the transportation of mail by aircraft on any star route, except as authorized by the act of October 14, 1940 (54 Stat. 1175), entitled "An act authorizing special arrangements in the transportation of mail within the Territory of Alaska," the Postmaster General shall obtain from the Civil Aeronautics Board a certification

that the proposed route does not conflict with the development of air transportation as contemplated under the Civil Aeronautics Act of 1938, as amended: *Provided further*, That any such contract made under authority of this section shall be canceled upon the issuance by the Civil Aeronautics Board of an authorization under title IV of the Civil Aeronautics Act of 1938, as amended, to any air carrier to engage in the transportation of mail by aircraft between any of the points named in such contract: *And provided further*, That no bid for a contract under this section shall be considered unless the bidder is a resident of or qualified to do business as a common carrier by air in a State within which one or more points to be served under such proposed contract are located. As used in this section, the term "State" includes the several States, the Territories of Alaska and Hawaii, and the District of Columbia.

(b) *Action by Civil Aeronautics Board*. Upon receipt of a request from the Postmaster General for the certification required in paragraph (a) of this section, the Civil Aeronautics Board shall promptly publish in the FEDERAL REGISTER, and send to such persons as the Board may by regulation determine, a notice describing the proposed air star route. After giving notice pursuant to this subsection, the Board shall afford interested persons a reasonable opportunity to submit written data, views or arguments with or without opportunity to present the same orally in any manner. The Board shall give due consideration to all relevant matter presented and, not less than thirty days after notice is given, except in any situation in which it for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in its order granting certification) that such period of advance notice is impracticable, unnecessary or contrary to the public interest, shall grant the requested certification upon finding that the proposed route does not conflict with the development of air transportation as contemplated under the Civil Aeronautics Act of 1938, as amended.

(Interprets or applies sec. 6, 52 Stat. 219, as amended; 39 U. S. C. and Sup., 470)

2. Add a new section, § 97.74 *Utilization of Coast Guard facilities and personnel*, in the text immediately following § 97.73 to read as follows:

§ 97.74 *Utilization of Coast Guard facilities and personnel*. Coast Guard facilities and personnel may be utilized for the transportation and delivery of mail matter during emergency conditions or at isolated locations under such arrangements as may be satisfactory to the Secretary (of the Treasury) and the Postmaster General.

(Interprets or applies 63 Stat. 506; 14 U. S. C. Sup., 146)

(R. S. 161, 396, secs. 304, 309, 42 Stat. 24, 25; 5 U. S. C. 22, 369)

[SEAL] J. M. DONALDSON,  
Postmaster General.

[F. R. Doc. 50-4177; Filed, May 16, 1950; 8:49 a. m.]

## TITLE 43—PUBLIC LANDS: INTERIOR

### Chapter I—Bureau of Land Management, Department of the Interior

#### Appendix—Public Land Orders

[Public Land Order 645]

#### ARIZONA

REVOKING IN PART EXECUTIVE ORDER NO.  
1187 OF APRIL 9, 1910

By virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943 it is ordered as follows:

Executive Order No. 1187 of April 9, 1910 withdrawing public lands for the use of the War Department for military purposes is hereby revoked so far as it affects the following-described land:

#### GILA AND SALT RIVER MERIDIAN

T. 1 N., R. 3 W.,  
Sec. 19, NE¼.

The area described contains 160 acres. The land shall not be subject to the initiation of any rights or to any disposition under the public-land laws until it is so provided by an order of classification to be issued by the Regional Administrator, Bureau of Land Management, Albuquerque, New Mexico, opening the land to application under the Small Tract Act of June 1, 1938, 52 Stat. 609 (43 U. S. C. 682a) as amended, with a ninety-day preference right period for filing such applications by veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747, as amended (43 U. S. C. 279 et seq.).

C. GIRARD DAVIDSON,  
Acting Secretary of the Interior.

MAY 10, 1950.

[F. R. Doc. 50-4179 Filed, May 16, 1950; 8:46 a. m.]

[Public Land Order 646]

#### CALIFORNIA

#### WITHDRAWING PUBLIC LANDS FOR USE OF THE DEPARTMENT OF THE AIR FORCE

By virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Subject to valid existing rights, the public lands within the following-described areas are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining and mineral-leasing laws, and reserved for the use of the Department of the Air Force as an air force base:

#### SAN BERNARDINO MERIDIAN

T. 10 N., R. 8 W.,  
Sec. 18, NE¼, lots 1 and 2 of the NW¼, and  
N½ of lots 1 and 2 of the SW¼.  
T. 8 N., R. 9 W.,  
Sec. 10, S½SE¼;  
Sec. 18, SE¼;  
Sec. 23, W½.  
T. 10 N., R. 9 W.,  
Sec. 14, SE¼;  
Sec. 22, E½, SW¼, S½NW¼;  
Sec. 24, N½NW¼;  
Sec. 30, SW¼SE¼.