

§ 779.241

“handling or in any other manner working on goods” in section 3(s) are the same as the activities, encompassed in the similar term in section 3(j), by which goods are “produced” within the meaning of the Act. In general, the term “handling * * * or otherwise working on goods” includes employees who sort, screen, grade, store, pack, label, address, transport, deliver, print, type, or otherwise handle or work on the goods. The same will be true of employees who handle or work on “any part of ingredient of the goods” referred to in the discussion of the term “goods” in § 779.107. An employee will be considered engaged in “handling * * * or otherwise working on goods,” within the meaning of section 3(s), only if he performs the described activities on goods that “have been moved in or produced for commerce by any person.” This requirement is discussed in §§ 779.242 and 779.243.

§ 779.241 Selling.

The statutory definition of the term “sale” or “sell” is quoted in § 779.15. As long as the employee in any way participates in the sale of the goods he will be considered to be “selling” the goods, whether he physically handles them or not. Thus, if the employee performs any work that, in a practical sense is an essential part of consummating the “sale” of the particular goods, he will be considered to be “selling” the goods. “Selling” goods, under section 3(s) has reference only to goods which “have been moved in or produced for commerce by any person,” as discussed in §§ 779.242 and 779.243.

§ 779.242 Goods that “have been moved in” commerce.

For the purpose of section 3(s), goods will be considered to “have been moved * * * in commerce” when they have moved across State lines before they are handled, sold, or otherwise worked on by the employees. It is immaterial in such a case that the goods may have “come to rest” within the meaning of the term “in commerce” as interpreted in other respects, before they are handled, sold, or otherwise worked on by the employees in the enterprise. Such movement in commerce may take

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place before they have reached the enterprise, or within the enterprise, such as from a warehouse of the enterprise in one State to a retail store of the same enterprise located in another State. Thus, employees will be considered to be “handling, selling, or otherwise working on goods that have been moved in * * * commerce” where they are engaged in the described activities on “goods” that have moved across State lines at any time in the course of business, such as from the manufacturer to the distributor, or to the “enterprise,” or from one establishment to another within the “enterprise.” See the general discussion in part 776 of this chapter.

§ 779.243 Goods that have been “produced for commerce by any person.”

An employee will be considered to be handling, selling, or otherwise working on goods that have been “produced for commerce by any person” within the meaning of section 3(s), if he is performing the described activities with respect to goods which have been “produced for commerce” within the meaning of the Act. The term “produced” is defined in section 3(j) of the Act and, as explained above, has a well-established meaning under the existing law. (See § 779.104 and part 776 of this chapter.) The word as it is used in the context of the phrase “goods * * * produced for commerce by any person” in section 3(s) has the same meaning as in 3(j). Therefore, where goods are considered “produced for commerce” within the meaning of section 3(j) of the Act they also will be considered “produced for commerce” within the meaning of section 3(s). A discussion of when goods are produced for commerce within the meaning of section 3(j) is contained in § 779.108. Of course, within the meaning of section 3(s), the goods will be considered “produced for commerce” when they are so produced “by any person.”

COVERED RETAIL ENTERPRISE

§ 779.244 “Covered enterprises” of interest to retailers of goods or services.

Retailers of goods or services are primarily concerned with the enterprises described in sections 3(s)(1) and 3(s)(5)

of the prior Act and section 3(s)(1) of the Act as amended in 1966. Although section 3(s)(1) of the prior Act (under the 1961 amendments) had exclusive application to the retail and service industry, section 3(s)(1) of the Act as amended in 1966 may apply to any enterprise. This part is concerned only with retail or service establishments and enterprises. Enterprises described in clauses (2), (3), and (4) of section 3(s) are discussed herein only with respect to the application to them of provisions relating to retail or service establishments. Coverage of such enterprises and the application of section 3(s)(1) of the amended Act to enterprises generally are discussed in part 776 of this chapter. The statutory definitions of enterprises of interest to retailers under the prior Act and the Act as amended in 1966 are quoted in § 779.22.

§ 779.245 Conditions for coverage of retail or service enterprises.

(a) Retail or service enterprises may be covered under section 3(s)(1) of the prior Act or section 3(s)(1) of the amended Act although the latter is not limited to retail or service enterprises. A retail or service enterprise will be a covered enterprise under section 3(s)(1) of the amended Act if both the following conditions are met:

(1) The enterprise is “an enterprise engaged in commerce or in the production of goods for commerce.” This requirement, which is discussed in §§ 779.237 through 779.243, applies to all covered enterprises under the provisions of both the prior and the amended Act; and,

(2) During the period February 1, 1967, through January 31, 1969, the enterprise has an annual gross volume of sales made or business done, exclusive of excise taxes at the retail level which are separately stated, of at least \$500,000; or on and after February 1, 1969, the enterprise has an annual gross volume of sales made or business done of at least \$250,000, exclusive of excise taxes at the retail level which are separately stated.

(b) A retail or service enterprise will be covered under section 3(s)(1) of the Act prior to the amendments if all four of the following conditions are met:

(1) The enterprise is “an enterprise engaged in commerce or in the production of goods for commerce” as explained above in paragraph (a)(1) of this section and,

(2) The enterprise has one or more “retail or service establishments” (the statutory definition of the term “retail or service establishment” is contained in § 779.24 and discussed in subpart D of this part) and,

(3) The enterprise has an annual gross volume of sales of \$1 million or more, exclusive of excise taxes at the retail level which are separately stated and,

(4) The enterprise “purchases or receives goods for resale that move or have moved across State lines (not in deliveries from the reselling establishment) which amount in total annual volume to \$250,000 or more.” (This requirement is discussed in §§ 779.246 through 779.253.)

(c) Sections 779.258 through 779.260 discuss the meaning of “annual gross volume of sales made or business done” and §§ 779.261 through 779.264 discuss what excise taxes may be excluded from the annual gross volume. Sections 779.265 through 779.269 discuss the method of computing the annual gross volume where it is necessary to determine monetary obligations to employees under the Act.

INTERSTATE INFLOW TEST UNDER PRIOR ACT

§ 779.246 Inflow test under section 3(s)(1) of the Act prior to 1966 amendments.

To come within the scope of section 3(s)(1) of the prior Act, the enterprise, in addition to the other conditions, must purchase or receive goods for resale that move or have moved across State lines (not in deliveries from the reselling establishment) which amount in total annual volume to \$250,000 or more. To meet this condition, it must be shown that (a) the enterprise purchases or receives goods for resale (§ 779.248), (b) that such goods move or have moved across State lines (§ 779.249), and (c) that such purchases and receipts amount in total annual volume to \$250,000 or more (§ 779.253). Enterprises which do not meet this test may be covered under section 3(s)(1) of