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foreign commerce is carried on. Employees engaged in any closely related process or occupation directly essential to such production of any goods, whether employed by the producer or by an independent employer, are also engaged, by definition, in “production.” Thus, employees engaged in the administration, planning, management, and control of the various physical processes together with the accompanying clerical and accounting activities are, from a productive standpoint and for purposes of the FLSA, “engaged in the production of goods for commerce.”

(b) Employees engaged in the production of goods for interstate or foreign commerce include those who work in manufacturing, processing, and distributing establishments, including wholesale and retail establishments that “produce” (including handling or working on) goods for such commerce. This includes everyone employed in such establishments, or elsewhere in the enterprises by which they are operated, whose activities constitute “production” of such goods under the principles outlined in paragraph (a) of this section. Thus, employees who sell, process, load, pack, or otherwise handle or work on goods which are to be shipped or delivered outside the State either by their employer or by another firm, and either in the same form or as a part or ingredient of other goods, are engaged in the production of goods for commerce within the coverage of the FLSA. So also are the office, management, sales, and shipping personnel, and maintenance, custodial, and protective employees who perform as a part of the integrated effort for the production of the goods for commerce, services related to such production or to such goods or to the plant, equipment, or personnel by which the production is accomplished.

§ 1620.4 “Closely related” and “directly essential” activities.

An employee is engaged in the production of goods for interstate or foreign commerce within the meaning of the FLSA even if the employee’s work is not an actual and direct part of such production, so long as the employee is engaged in a process or occupation which is “closely related” and “directly essential” to it. This is true whether the employee is employed by the producer of the goods or by someone else who provides goods or services to the producer. Typical of employees covered under these principles are computer operators, bookkeepers, stenographers, clerks, accountants, and auditors and other office and white-collar workers, and employees doing payroll, timekeeping, and time study work for the producer of goods; employees in the personnel, labor relations, employee benefits, safety and health, advertising, promotion, and public relations activities of the producing enterprise; work instructors for the producers; employees maintaining, servicing, repairing or improving the buildings, machinery, equipment, vehicles or other facilities used in the production of goods for commerce, and such custodial and productive 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 waste materials therewith, or transporting materials or other goods, or performing such other transportation activities, as the needs of production may require. These examples are illustrative, rather than exhaustive, of the employees who are “engaged in the production of goods for commerce” by reason of performing activities closely related and directly essential to such production.

§ 1620.5 What goods are considered as “produced for commerce.”

Goods (as defined in section 3(i) of the FLSA) are “produced for commerce” if they are “produced, manufactured, mined, handled or in any other manner worked on” in any State for sale, trade, transportation, transmission, shipment, or delivery, to any place outside thereof. Goods are produced for commerce where the producer 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 of ingredient of other goods) in interstate or foreign commerce. If such movement of the goods in commerce can reasonably be anticipated by the

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producer when the goods are produced, it makes no difference whether the pro-
ducer or the person to whom the goods
are transferred puts the goods in inter-
state or foreign commerce. The fact
that goods do move in interstate or for-
eign commerce is strong evidence that
the producer intended, hoped, expected,
or had reason to believe that they
would so move. Goods may also be pro-
duced “for commerce” where they are
to be used within the State and not
transported in any form across State
lines. This is true where the goods are
used to serve the needs of the instru-
mentalties or facilities by which
interstate or foreign commerce is car-
ried on within the State. For examples,
see 29 CFR 776.20.

§ 1620.6 Coverage is not based on
amount of covered activity.
The FLSA makes no distinction as to
the percentage, volume, or amount of
activities of either the employee or the
employer which constitute engaged in
commerce or in the production of goods
for commerce. Every employee whose
activities in commerce or in the pro-
duction of goods for commerce, even
though small in amount, are regular
and recurring, is considered “engaged
in commerce or in the production of
goods for commerce”.

§ 1620.7 “Enterprise” coverage.
(a) The terms “enterprise” and “en-
terprise engaged in commerce or in the
production of goods for commerce” are
declared in subsections 3(r) and 3(s) of
the FLSA. Under the enterprise con-
cept, if a business is an “enterprise en-
gaged in commerce or in the produc-
tion of goods for commerce,” every em-
ployee employed in such enterprise or
by such enterprise is within the cov-
erage of the EPA unless specifically ex-
empted in the FLSA, regardless of
whether the individual employee is ac-
tually engaged in commerce or in the
production of goods for commerce. The
term “enterprise” is not synonymous
with the terms “employer” or “estab-
lishment” although on occasion the
three terms may apply to the same
business entity. An enterprise may
consist of a single establishment oper-
ated by one or more employers. (See
definitions of “employer” and “estab-
lishment” in §§1620.8 and 1620.9.)
(b) In order to constitute an enter-
prise, the activities sought to be aggre-
gated must be related to each other,
they must be performed under a unified
operation or common control, and they
must be performed for a common busi-
ness purpose. Activities are related
when they are the same or similar, or
when they are auxiliary services nec-
essary to the operation and mainte-
nance of the particular business. Ac-
tivities constitute a unified operation
when the activities are operated as a
single business unit or economic enti-
ty. Activities are performed under
common control when the power to di-
rect, restrict, regulate, govern or ad-
minister the performance of the activi-
ties resides in a single person or entity
or when it is shared by a group of per-
sons or entities. Activities are per-
formed for a common business purpose
when they are directed to the same or
similar business objectives. A deter-
mination whether the statutory char-
acteristics of an enterprise are present
in any particular case must be made on
a case-by-case basis. See generally,
subpart C of 29 CFR part 779 for a de-
tailed discussion of the term “enter-
prise” under the FLSA.

§ 1620.8 “Employer,” “employee,” and
“employ” defined.
The words “employer,” “employee,”
and “employ” as used in the EPA are
defined in the FLSA. Economic reality
rather than technical concepts deter-
mines whether there is employment
within the meaning of the EPA. The
common law test based upon the power
to control the manner of performance
is not applicable to the determination
of whether an employment relationship
subject to the EPA exists. An “em-
ployer,” as defined in section 3(d) of
the FLSA, means “any person acting di-
rectly or indirectly in the interest of
an employer in relation to an em-
ployee” and includes a “public agency,”
as defined in section 3(x). An “em-
ployee,” as defined in section 3(e) of
the FLSA, “means any individual employed
by an employer.” “Employ,” as used in
the EPA, is defined in section 3(g) of
the FLSA to include “to suffer or per-
mit to work.” Two or more employers