

Wage and Hour Division, Labor

§ 570.108

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.

The term includes such things as food-stuffs, clothing, machinery, printed materials, blueprints and also includes intangibles such as news, ideas, and intelligence. The statute expressly excludes goods after their delivery into the actual physical possession of an ultimate consumer other than a producer, manufacturer, or processor thereof. Accordingly, such a consumer may lawfully ship articles in his possession although they were ineligible for shipments (commonly called "hot goods") before he received them.¹¹

§ 570.108 "Produced".

The word "produced" as used in the Act is defined by section 3(j) to mean:

* * * produced, manufactured, mined, handled, or in any other manner worked on in any state; * * *¹²

(a) The prohibition of section 12(a) cannot apply to a shipment of goods unless those goods (including any part or ingredient thereof) were actually "produced" in and removed from an establishment where oppressive child labor was employed. This provision is applicable even though the under-age employee does not engage in the production of the goods themselves if somewhere in the establishment in or about which he is employed goods are "produced" which are subsequently shipped or delivered for shipment in commerce. In contrast to this restrictive requirement of section 12(a), it

will be noted that the employees covered under the wage and hours provisions as engaged in the production of goods for commerce are not limited to those in or about establishments where such goods are being produced. If the requisite relationship¹³ to production of such goods is present, an employee is covered for wage and hours purposes regardless of whether his work brings him in or near any establishment where the goods are produced.¹⁴

(b) Since the first word in the definition of "produced" repeats the term being defined, it seems clear that the first word must carry the meaning that it has in everyday language. Goods are commonly spoken of as "produced" if they have been brought into being as a result of the application of work. The words "manufactured" and "mined" in the definition refer to special forms of production. The former term is generally applied to the products of industry where existing raw materials are transformed into new or different articles by the use of industrial methods, either by the aid of machinery or by manual operations. Mining is a type of productive activity involving the taking of materials from the ground, such as coal from a coal mine, oil from oil wells, or stone from quarries. The statute also defines the term "produced" to mean "handled" or "in any other manner work on."¹⁵ These words relate not only to operations carried on in the course of manufacturing, mining, or production as commonly described, but include as well all kinds of operations which prepare goods for their entry into the stream of commerce, without regard to whether the goods are to be further processed or are so-called "finished goods."¹⁶ Accordingly, warehouses, fruit and vegetable packing

¹¹For a discussion of the exclusionary clause in section 3(i) of the Act, see *Powell et al. v. United States Cartridge Co.*, 70 S. CT. 755.

¹²The remaining portion of section 3(j) provides: " * * * 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."

¹³See footnote 12.

¹⁴See part 776 of this title (interpretative Bulletin on the coverage of the wage and hours provisions) issued by the Administrator of the Wage and Hour Division. Also, see §§ 570.112 and 570.113.

¹⁵For a more complete discussion of these words, see § 776.16 of part 776 (bulletin on coverage of the wage and hours provisions) of chapter V of this title.

¹⁶In *Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490, the Supreme Court stated that

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sheds, distribution yards, grain elevators, etc., where goods are sorted, graded, stored, packed, labeled or otherwise handled or worked on in preparation for their shipment out of the State are producing establishments for purposes of section 12(a).¹⁷ However, the handling or working on goods, performed by employees of carriers which accomplishes the interstate transit or movement in commerce itself, does not constitute production under the Act.¹⁸

§ 570.109 “Establishment situated in the United States”.

(a)(1) The statute does not expressly define “establishment.” Accordingly, the term should be given a meaning which is not only consistent with its ordinary usage, but also designed to accomplish the general purposes of the Act. As normally used in business and in Government, the word “establishment” refers to a distinct physical place of business. This is the meaning attributed to the term as it is used in section 13(a)(2) of the Act.¹⁹ Since the establishments covered under section 12(a) of the Act are those in which goods are produced, the term “establishment” there refers to a physical place where goods are produced. Typical producing establishments are industrial plants, mines, quarries, and the like. The producing establishment, however, need not have a permanently fixed location as is the case with a fac-

these words bring within the statutory definition “every step in putting the subject of 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.”

¹⁷ *Lenroot v. Kemp and Lenroot v. Hazlehurst Mercantile Co.*, 153 F. 2d 153 (C.A. 5), where the court directed issuance of injunctions to restrain violations of the child labor provisions by operators of vegetable packing sheds at which they bought, then washed, sorted, crated, and packed cabbage and tomatoes for shipment in interstate commerce.

¹⁸ *Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490.

¹⁹ *A. H. Phillips, Inc. v. Walling*, 324 U.S. 490. See part 779 (bulletin on the retail and service establishment exemption from the wage and hours provisions) of chapter V of this title.

tory or mine. A boat, for instance, where productive activities such as catching or canning fish are carried on is considered a producing establishment for purposes of section 12(a).

(2) Frequently, questions arise as to what should be considered a single establishment. No hard and fast rule can be laid down which will fix the area of all establishments. Accordingly, a determination of the area contained in a single establishment must be based upon the facts of each individual situation. Facts which are particularly pertinent in this connection, however, are those which relate to the physical characteristics and the manner of operation and control of the business. Sometimes, an establishment may extend over an area of several square miles as is common with farms, logging enterprises, mines, and quarries. On the other hand, it may be confined to a few square feet. A typical illustration of this is a loft building that houses the workshops of hundreds of independent manufacturing firms. Each of the workshops is, for purposes of this section, a separate establishment.

(3) Similar principles are applicable in determining whether several buildings located on the same premises constitute one establishment or more than one. For example, where several factory buildings are located on the same premises and owned and operated by the same person, they are generally to be considered as a single establishment. On the other hand, factory buildings located on the same premises, but owned and operated by different persons, will not ordinarily be treated as a single establishment. Where the several factories, however, are engaged in a joint productive enterprise, they may constitute a single establishment. This is the case, for example, where a large shipyard contains the plants of a number of subcontractors who are engaged in making parts or equipment for the boats that are built in the yard.

(b) The phrase “situated in the United States” is construed to include any of the 50 States or the District of Columbia or any Territory or possession of the United States.