

## Wage and Hour Division, Labor

## § 570.108

case of a Detroit manufacturer who delivers his goods in Detroit to a distributor who, as the manufacturer is well aware, will ship the goods into another State. A delivery for shipment in commerce may also be made where raw materials are delivered by their producer to a manufacturer in the same State who converts them into new products which are later shipped across State lines. If the producer in such case is aware or has reason to believe that the finished products will ultimately be sent into another State, his delivery of the raw materials to the manufacturer is a delivery for shipment in commerce. Another example is a paper box manufacturer who ships a carton of boxes to a fresh fruit or vegetable packing shed within the same State, with knowledge or reason to believe that the boxes will there be filled with fruits or vegetables and shipped outside the State. In such case the box manufacturer has delivered the boxes for shipment in commerce.

### § 570.107 "Goods".<sup>10</sup>

(a) Section 12(a) prohibits the shipment or delivery for shipment in commerce of "any goods" produced in an establishment which were removed within 30 days of the employment there of oppressive child labor. It should be noted that the statute does not base the prohibition of section 12(a) upon the percentage of an establishment's output which is shipped in commerce.

(b) The Act furnishes its own definition of "goods" in section 3(i), as follows:

*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.

though the purchasers acquired title to the goods.

<sup>10</sup>The term *goods* is discussed in more detail in 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.

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.<sup>11</sup>

### § 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; \* \* \*<sup>12</sup>

(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 relationship<sup>13</sup> to production

<sup>11</sup>For 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.

<sup>12</sup>The 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."

<sup>13</sup>See footnote 12.

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.<sup>14</sup>

(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.”<sup>15</sup> 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.”<sup>16</sup> Accordingly, warehouses, fruit and vegetable packing sheds, distribution yards, grain ele-

vators, 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).<sup>17</sup> 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.<sup>18</sup>

**§ 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.<sup>19</sup> 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 factory 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

<sup>14</sup>See 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.

<sup>15</sup>For 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.

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

<sup>17</sup>*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.

<sup>18</sup>*Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490.

<sup>19</sup>*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.