interstate or foreign commerce. If such movement of the goods in commerce can reasonably be anticipated by the producer when the goods are produced, it makes no difference whether the producer or the person to whom the goods are transferred puts the goods in interstate or foreign commerce. The fact that goods do move in interstate or foreign commerce is strong evidence that the producer intended, hoped, expected, or had reason to believe that they would so move. Goods may also be produced ''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 instrumentalities or facilities by which interstate or foreign commerce is carried 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 production 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 ''enterprise engaged in commerce or in the production of goods for commerce'' are defined in subsections 3(r) and 3(s) of the FLSA. Under the enterprise concept, if a business is an ''enterprise engaged in commerce or in the production of goods for commerce,'' every employee employed in such enterprise or by such enterprise is within the coverage of the EPA unless specifically exempted in the FLSA, regardless of whether the individual employee is actually engaged in commerce or in the production of goods for commerce. The term ''enterprise'' is not synonymous with the terms ''employer'' or ''establishment'' although on occasion the three terms may apply to the same business entity. An enterprise may consist of a single establishment operated by one or more employers. (See definitions of ''employer'' and ''establishment'' in §§ 1620.8 and 1620.9.)

(b) In order to constitute an enterprise, the activities sought to be aggregated 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 business purpose. Activities are related when they are the same or similar, or when they are auxiliary services necessary to the operation and maintenance of the particular business. Activities constitute a unified operation when the activities are operated as a single business unit or economic entity. Activities are performed under common control when the power to direct, restrict, regulate, govern or administer the performance of the activities resides in a single person or entity or when it is shared by a group of persons or entities. Activities are performed for a common business purpose when they are directed to the same or similar business objectives. A determination whether the statutory characteristics 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 detailed discussion of the term ''enterprise'' 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 determines 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 ''employer,'' as defined in section 3(d) of the FLSA, means ''any person acting directly or indirectly in the interest of an employer in relation to an employee'' and includes a ''public agency,'' as defined in section 3(x). An ''employee,'' 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 permit to work.'' Two or more employers may be both jointly or severally responsible for compliance with the statutory requirements applicable to employment of a particular employee.

§ 1620.9 Meaning of "establishment."

(a) Although not expressly defined in the FLSA, the term ''establishment'' had acquired a well settled meaning by the time of enactment of the Equal Pay Act. It refers to a distinct physical place of business rather than to an entire business or ''enterprise'' which may include several separate places of business. Accordingly, each physically separate place of business is ordinarily considered a separate establishment.

(b) In unusual circumstances, two or more portions of a business enterprise, even though located in a single physical place of business, may constitute more than one establishment. For example, the facts might reveal that these portions of the enterprise are physically segregated, engaged in functionally separate operations, and have separate employees and maintain separate records. Conversely, unusual circumstances may call for two or more distinct physical portions of a business enterprise being treated as a single establishment. For example, a central administrative unit may hire all employees, set wages, and assign the location of employment; employees may frequently interchange work locations; and daily duties may be virtually identical and performed under similar working conditions. Barring unusual circumstances, however, the term ''establishment'' will be applied as described in paragraph (a) of this section.

§ 1620.10 Meaning of "wages."

Under the EPA, the term ''wages'' generally includes all payments made to [or on behalf of] an employee as remuneration for employment. The term includes all forms of compensation irrespective of the time of payment, whether paid periodically or deferred until a later date, and whether called wages, salary, profit sharing, expense account, monthly minimum, bonus, uniform cleaning allowance, hotel accommodations, use of company car, gasoline allowance, or some other name. Fringe benefits are deemed to be remuneration for employment. ''Wages'' as used in the EPA (the purpose of which is to assure men and women equal remuneration for equal work) will therefore include payments which may not be counted under section 3(m) of the FLSA toward the minimum wage (the purpose of which is to assure employees a minimum amount of remuneration unconditionally available in cash or in board, lodging or other facilities). Similarly, the provisions of section 7(e) of the FLSA under which some payments may be excluded in computing an employee's ''regular rate'' of pay for purposes of section 7 do not authorize the exclusion of any such remuneration from the ''wages'' of an employee in applying the EPA. Thus, vacation and holiday pay, and premium payments for work on Saturdays, Sundays, holidays, regular days of rest or other days or hours in excess or outside of the employee's regular days or hours of work are deemed remuneration for employment and therefore wage payments that must be considered in applying the EPA, even though not a part of the employee's ''regular rate.''

§ 1620.11 Fringe benefits.

(a) ''Fringe benefits'' includes, e.g., such terms as medical, hospital, accident, life insurance and retirement benefits; profit sharing and bonus plans; leave; and other such concepts.

(b) It is unlawful for an employer to discriminate between men and women performing equal work with regard to fringe benefits. Differences in the application of fringe benefit plans which are based upon sex-based actuarial studies cannot be justified as based on ''any other factor other than sex.''

(c) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the ''head of the household'' or ''principal wage earner'' in the family unit, the overall implementation of the plan will be closely scrutinized.

(d) It is unlawful for an employer to make available benefits for the spouses or families of employees of one gender