

Equal Employment Opportunity Comm.

§ 1620.8

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,"