

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 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).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 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

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 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.

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.

§ 570.110 "In or about".

(a) Section 12(a) excludes from the channels of interstate commerce goods produced in an establishment "in or about" which oppressive child labor has been employed. In a great many situations it is obviously easy to determine whether a minor is employed "in" an establishment. Thus, he is so employed where he performs his occupational duties on the premises of the

producing establishment. Furthermore, a minor is also considered as employed in an establishment where he performs most of his duties off the premises but is regularly required to perform certain occupational duties in the establishment, such as loading or unloading a truck, checking in or out, or washing windows. This is true in such cases even though the minor is employed by someone other than the owner or operator of the particular establishment. On the other hand, a minor is not considered to be employed in an establishment other than his employer's merely because such establishment is visited by him for brief periods of time and for the sole purpose of picking up or delivering a message or other small article.

(b) If, in the light of the statements in paragraph (a) of this section, the minor cannot be considered as employed in the establishment, he may, nevertheless, be employed "about" it if he performs his occupational duties sufficiently close in proximity to the actual place of production to fall within the commonly understood meaning of the term "about." This would be true in a situation where the foregoing proximity test is met and the occupation of the minor is directly related to the activities carried on in the producing establishment, in this connection, occupations are considered sufficiently related to the activities carried on in the producing establishment to meet the second test above at least where the requisite relationship to production of goods exists within the meaning of section 3(j) of the Act.²⁰ By way of example, a driver's helper employed to assist in the distribution of the products of a bottling company who regularly boards the delivery truck immediately outside the premises of the bottling plant is considered employed "in or about" such establishment, without regard to whether he ever enters the plant itself. On the other hand, employees working entirely within one establishment are not considered to be employed "in or about" a wholly different establishment occupying separate premises and operated by another employer. This

²⁰ See part 776 (bulletin on coverage of the wage and hours provisions) of this title.