
29 C.F.R. § 776.21

“For” commerce.

(a) *General principles.* As has been made clear previously, where “goods” (as defined in the Act) are produced “for commerce,” every employee engaged in the “production” (as explained in §§ 776.15 through 776.19) of such goods (including any part or ingredient thereof) is within the general coverage of the wage and hours provisions of the Act. Goods are produced for “commerce” if they are produced for “trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.” ^[1] Goods are produced “for” such commerce where the employer intends, hopes, expects, or has reason to believe that the goods or any unsegregated part of them will move (in the same or in an altered form or as a part or ingredient of other goods) in such interstate or foreign commerce. ^[2] If such movement of the goods in commerce can be reasonably anticipated by the employer when his employees perform work defined in the Act as “production” of such goods, it makes no difference whether he himself, or a subsequent owner or possessor of the goods, put the goods in interstate or foreign commerce. ^[3] The fact that goods do move in interstate or foreign commerce is strong evidence that the employer intended, hoped, expected, or had reason to believe that they would so move.

Although it is generally well understood that goods are produced “for” commerce if they are produced for movement in commerce to points outside the State, questions have been raised as to whether work done on goods may constitute production “for” commerce even though the goods do not ultimately leave the State. As is explained more fully in the paragraphs following, there are certain situations in which this may be true, either under the principles above stated (see paragraph (c) of this section), or because it appears that the goods are produced “for” commerce in the sense that they are produced for use directly in the furtherance, within the particular State, of the actual movement to, from, or across such State or interstate or foreign commerce. (See paragraph (b) of this section).

(b) *Goods produced for direct furtherance of interstate movement.* (1) The Act's definition of “commerce,” as has been seen, describes a movement, among the several States or between any State and any outside place, of trade, commerce, transportation, transmission, or communication.” Whenever goods are produced “for” such movement, such goods are produced “for commerce,” whether or not there is any expectation or reason to anticipate that the particular goods will leave the State. ^[4]

(2) The courts have held that particular goods are produced “for” commerce when they are produced with a view to their use, whether within or without the State, in the direct furtherance of the movement of interstate or foreign commerce. Thus, it is well settled that ice is produced “for” commerce when it is produced for use by interstate rail or motor carriers in the refrigeration or cooling of the equipment in which the interstate traffic actually moves, even though the particular ice may melt before the equipment in which it is placed leaves the State. ^[5] The goods (ice) produced for such use “enter into the very means of transportation by which the burdens of traffic are borne.” ^[6] The same may be said of electrical energy produced and sold within a single State for such uses as lighting and operating signals on railroads and at airports to guide interstate traffic,

lighting and operating radio stations transmitting programs interstate, and lighting and message transmission of telephone and telegraph companies. ^[7] Similar principles would apply to the production of fuel or water for use in the operation of railroads with which interstate and foreign commerce is carried on; the production of radio or television scripts which provide the basis for programs transmitted interstate; the production of telephone and telegraph poles for use in the necessary repair, maintenance, or improvement of interstate communication systems; the production of crushed rock, ready-mixed concrete, cross-ties, concrete culvert pipe, bridge timbers, and similar items for use in the necessary repair, maintenance, or improvement of railroad roadbeds and bridges which serve as the instrumentalities over which interstate traffic moves.

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