AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

foreign commerce. Similarly, employees of such businesses as banking, insurance, newspaper publishing,[33] and others which regularly utilize the channels of interstate and foreign commerce in the course of their operations, are generally covered by the Act.

(b) Employees whose work is an essential part of the stream of interstate or foreign commerce, in whatever type of business they are employed, are likewise engaged in commerce and within the Act's coverage. This would include, for example, employees of a warehouse whose activities are connected with the receipt or distribution of goods across State lines.[34] Also, since ''commerce'' as used in the Act includes not only ''transmission'' of communications but ''communication'' itself, employees whose work involves the continued use of the interstate mails, telegraph, telephone or similar instrumentalities for communication across State lines are covered by the Act.[35] This does not mean that any use by an employee of the mails and other channels of communication is sufficient to establish coverage. But if the employee, as a regular and recurrent part of his duties, uses such instrumentalities in obtaining or communicating information or in sending or receiving written reports or messages, or orders for goods or services, or plans or other documents across State lines, he comes within the scope of the Act as an employee directly engaged in the work of ''communication'' between the State and places outside the State.

[15 FR 2925, May 17, 1950, as amended at 22 FR 5684, July 18, 1957]

[33] *Sun Pub. Co.* v. *Walling,* 140 F. 2d 445 (C.A. 6), certiorari denied 322 U.S. 728. See also *Oklahoma Press Pub. Co.* v. *Walling,* 327 U.S. 186, and *McComb* v. *Dessau,* 9 W.H. Cases 332 (S.D. Calif.) 17 Labor Cases, 65, 643.

[34] *Phillips Co.* v. *Walling,* 324 U.S. 490; *Clyde* v. *Broderick,* 144 F. 2d 348 (C.A. 10).

[35] *McComb* v. *Weller,* 9 W.H. Cases 53 (W.D. Tenn.); *Yunker* v. *Abbye Employment Agency,* 32 N.Y.S. 2d 715; (Munic. Ct. N.Y.C.); *Phillips* v. *Meeker Coop. Light & Power Asso.,* 63 F. Supp. 733 (D. Minn.); *Anderson Bros. Corp.* v. *Flynn,* 218 S.W. 2d 653 (C.A. Ky.).

§ 776.11 Employees doing work related to instrumentalities of commerce.

(a) Another large category of employees covered as ''engaged in commerce'' is comprised of employees performing the work involved in the maintenance, repair, or improvement of existing instrumentalities of commerce. (See the cases cited in footnote 28 to § 776.9. See also the discussion of coverage of employees engaged in building and construction work, in subpart B of this part.) Typical illustrations of instrumentalities of commerce include railroads, highways, city streets, pipe lines, telephone lines, electrical transmission lines, rivers, streams, or other waterways over which interstate or foreign commerce more or less regularly moves; airports; railroad, bus, truck, or steamship terminals; telephone exchanges, radio and television stations, post offices and express offices; bridges and ferries carrying traffic moving in interstate or foreign commerce (even though within a single State); bays, harbors, piers, wharves and docks used for shipping between a State and points outside; dams, dikes, revetments and levees which directly facilitate the uninterrupted movement of commerce by enhancing or improving the usefulness of waterways, railways, and highways through control of water depth, channels or flow in streams or through control of flood waters; warehouses or distribution depots devoted to the receipt and shipment of goods in interstate or foreign commerce; ships, vehicles, and aircraft regularly used in transportation of persons or goods in commerce; and similar fixed or movable facilities on which the flow of interstate and foreign commerce depends.

(b) It is well settled that the work of employees involved in the maintenance, repair, or improvement of such existing instrumentalities of commerce is so closely related to interstate or foreign commerce as to be in practice and in legal contemplation a part of it. Included among the employees who are thus ''engaged in commerce'' within the meaning of the Act are employees of railroads, telephone companies, and

similar instrumentalities who are engaged in maintenance-of-way work; [36] employees (including office workers, guards, watchmen, etc.) engaged in work on contracts or projects for the maintenance, repair, reconstruction or other improvement of such instrumentalities of commerce as the transportation facilities of interstate railroads, highways, waterways, or other interstate transportation facilities, or interstate telegraph, telephone, or electrical transmission facilities (see subpart B of this part); and employees engaged in the maintenance or alteration and repair of ships [37] or trucks [38] used as instrumentalities of interstate or foreign commerce. Also, employees have been held covered as engaged in commerce where they perform such work as watching or guarding ships or vehicles which are regularly used in commerce [39] or maintaining, watching, or guarding warehouses, railroad or equipment yards, etc., where goods moving in interstate commerce are temporarily held, [40] or acting as porters, janitors, or in other maintenance capacities in bus stations, railroad stations, airports, or other transportation terminals. [41]

(c) On the other hand, work which is less immediately related to the functioning of instrumentalities of commerce than is the case in the foregoing examples may be too remote from interstate or foreign commerce to establish coverage on the ground that the employee performing it is ''engaged in commerce.'' This has been held true, for example, of a cook preparing meals for workmen who are repairing tracks over which interstate trains operate,[42] and of a porter caring for washrooms and lockers in a garage which is not an instrumentality of commerce, where trucks used both in intrastate and interstate commerce are serviced.[43]

(d) There are other situations in which employees are engaged ''in commerce'' and therefore within the coverage of the Act because they contribute directly to the movement of commerce by providing goods or facilities to be used or consumed by instrumentalities of commerce in the direct furtherance of their activities of transportation, communication, transmission, or other movement in interstate or foreign commerce. Thus, for example, employees are considered engaged ''in commerce'' where they provide to railroads, radio stations, airports, telephone exchanges, or other similar instrumentalities of commerce such things as electric energy,[44] steam, fuel, or water, which are required for the movement of the commerce carried by

[36] *Davis* v. *Rockton & Rion R.R.,* 65 F. Supp. 67 affirmed in 159 F. 2d 291 (C.A. 4); *North Shore Corp.* v. *Barnett,* 143 F. 2d 172 (C.A. 5); *Palmer* v. *Howard,* 12 Lab. Cas. (CCH) par. 63, 756 (W.D. Tenn.); *Williams* v. *Atlantic Coast Lines R.R. Co.,* 1 W.M. Cases 289 (E.D. N.C. 1940), 2 Labor Cases (CCH) par. 18, 564.

[37] *Slover* v. *Wathen,* 140 F. 2d 258 (C.A. 4); *Walling* v. *Keansburg Steamboat Co.,* 162 F. 2d 405 (C.A. 3).

[38] *Boutell* v. *Walling,* 327 U.S. 463; *Morris* v. *McComb,* 332 U.S. 422; *Skidmore* v. *John J. Casale, Inc.,* 160 F. 2d 527 (C.A. 2), certiorari denied 331 U.S. 812; *Hertz Drivurself Stations* v. *United States,* 150 F. 2d 923 (C.A. 8); *Walling* v. *Sturm & Sons, Inc.,* 6 W.H. Cases 131 (D.N.J.) 10 Labor Cases (CCH) par. 62, 980.

As to exemptions from the overtime requirements for mechanics employed by motor carriers, see part 782 of this chapter. For exemptions applicable to retail or service establishments, see part 779 of this chapter.

[39] *Slover* v. *Wathen,* 140 F. 2d 258 (C.A. 4); *Agosto* v. *Rocafort,* 5 W.H. Cases 176 (D.P.R.), 9 Labor Cases (CCH) par. 62, 610; *Cannon* v. *Miller,* 155 F. 2d 500 (S. Ct. Wash.).

[40] *Engebretson* v. *E. J. Albrecht Co.,* 150 F. 2d 602 (C.A. 7); *Mid-Continent Petroleum Corp.* v. *Keen,* 157 F. 2d 310 (C.A. 8); *Walling* v. *Mutual Wholesale Food & Supply Co.,* 141 F. 2d 331 (C.A. 8); *Walling* v. *Sondock,* 132 F. 2d 77 (C.A. 5); certiorari denied 318 U.S. 772; *Reliance Storage & Insp. Co.* v. *Hubbard,* 50 F. Supp. 1012 (W.D. Va.); *Walling* v. *Fox-Pelletier Detective Agency,* 4 W.H. Cases 452 (W.D. Tenn. 1944); 8 Labor Cases (CCH) par. 62, 219; *McComb* v. *Russell Co.,* 9 W.H. Cases 258 (D. Miss. 1949), 17 Labor Cases (CCH) par. 65, 519.

[41] *Mornford* v. *Andrews,* 151 F. 2d 511 (C.A. 5); *Hargis* v. *Wabash R. Co.* 163 F. 2d 607 (C.A. 7); *Walling* v. *Atlantic Greyhound Corp.,* 61 F. Supp. 992 (E.D. S.C.); *Rouch* v. *Continental Oil Co.,* 55 F. Supp. 315 (D. Kans.); see also *Williams* v. *Jacksonville Terminal Co.,* 315 U.S. 386.

[42] *McLeod* v. *Threlkeld,* 319 U.S. 491.

[43] *Skidmore* v. *John J. Casale, Inc.,* 160 F. 2d 527, certiorari denied 331 U.S. 812 (use in interstate commerce of trucks serviced was from 10 to 25 percent of total use).

[44] *New Mexico Public Service Co.* v. *Engel,* 145 F. 2d 636 (C.A. 10); *Walling* v. *Connecticut Co.,* 154 F. 2d 552 (C.A. 2).

such instrumentalities.[45] Such work is ''so related to the actual movement of commerce as to be considered an essential and indispensable part thereof, and without which it would be impeded or impaired.'' [46]

§ 776.12 Employees traveling across State lines.

Questions are frequently asked as to whether the fact that an employee crosses State lines in connection with his employment brings him within the Act's coverage as an employee ''engaged in commerce.'' Typical of the employments in which such questions arise are those of traveling service men, traveling buyers, traveling construction crews, collectors, and employees of such organizations as circuses, carnivals, road shows, and orchestras. The area of coverage in such situations cannot be delimited by any exact formula, since questions of degree are necessarily involved. If the employee transports material or equipment or other persons across State lines or within a particular State as a part of an interstate movement, it is clear of course, that he is engaging in commerce.[47] And as a general rule, employees who are regularly engaged in traveling across State lines in the performance of their duties (as distinguished from merely going to and from their homes or lodgings in commuting to a work place) are engaged in commerce and covered by the Act.[48] On the other hand, it is equally plain that an employee who, in isolated or sporadic instances, happens to cross a State line in the course of his employment, which is otherwise intrastate in character, is not, for that sole reason, covered by the Act. Nor would a man who occasionally moves to another State in order to pursue an essentially local trade or occupation there become an employee ''engaged in commerce'' by virtue of that fact alone. Doubtful questions arising in the area between the two extremes must be resolved on the basis of the facts in each individual case.

§ 776.13 Commerce crossing international boundaries.

Under the Act, as amended, an employee engaged in ''trade commerce, transportation, transmission, or communication'' between any State and any place outside thereof is covered by the Act regardless of whether the ''place outside'' is another State or is a foreign country or is some other place. Before the amendment to section 3(b) which became effective January 25, 1950, employees whose work related solely to the flow of commerce into a State from places outside it which were not ''States'' as defined in the Act were not employees engaged in ''commerce'' for purposes of the Act, although employees whose work was concerned with the flow of commerce out of the State to such places were so engaged.[49] This placed employees of importers in a less favorable position under the Act than the employees of exporters. This inequality was removed by the amendment to section 3(b).[50] Accordingly, employees performing work in connection with the importation of goods from foreign countries are engaged ''in commerce'' and covered by the Act, as amended. The coverage of such employees, as of those performing work in connection with the exportation of goods to foreign countries, is determined by the same principles as in the case of employees whose work is connected with goods procured from or sent to other States.

---

[45] Such employees would also be covered as engaged in the production of goods for commerce. See *Lewis* v. *Florida Power & Light Co.,* 154 F. 2d 751 (C.A. 5); *Walling* v. *Connecticut Co.,* 154 F. 2d 552 (C.A. 2); also § 776.21(b).

[46] *New Mexico Public Service Co.* v. *Engel,* 145 F. 2d 636, 640 (C.A. 10).

[47] The employee may, however, be exempt from the overtime provisions of the Act under section 13(b)(1). See part 792 of this chapter.

[48] *Reck* v. *Zarmocay,* 264 App. Div. 520, 36 N.Y.S. 2d 394; *Colbeck* v. *Dairyland Creamery Co.,* 17 N.W. 2d 262 (S. Ct. S.D.).

[49] The definition of ''commerce'' previously referred to commerce ''from any State to any place outside thereof.'' The amendment substituted ''between'' for ''from'' and ''and'' for ''to'' in this clause.

[50] H. Mgrs. St., 1949, pp. 13, 14.