

member of the immediate family of such owner" shall not be considered to be an "enterprise" as described in section 3(r) or a part of any other enterprise. Further the sales of such establishment are not included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of section 3(s). The term "other member of the immediate family of such owner" is considered to include relationships such as brother, sister, grandchildren, grandparents, and in-laws but not distant relatives from separate households. The 1966 amendments extended the exception to include family operated establishments which only employ persons other than members of the immediate family infrequently, irregularly, and sporadically. (See general discussion in part 776 of this chapter.)

§ 779.235 Other "enterprises."

No attempt has been made in the discussion of the term "enterprise," to consider every possible situation which may, within the meaning of section 3(r), constitute an "enterprise" under the Act. The discussion is designed to explain and illustrate the application of the term in some cases; in others, the discussion may serve as a guide in applying the criteria of the definition to the particular fact situation. A more complete discussion is contained in part 776 of this chapter.

COVERED ENTERPRISES

§ 779.236 In general.

Sections 779.201 through 779.235 discuss the various criteria for determining what business unit or units constitute an "enterprise" within the meaning of the Act. Sections 779.237 through 779.245 discuss the criteria for determining what constitutes a "covered enterprise" under the Act with respect to the conditions for coverage of those enterprises in which retail sale of goods or services are made. As explained in §§ 779.2 through 779.4, previously covered employment in retail and service enterprises will be subject to different monetary standards than newly covered employment in such enterprises until February 1, 1971. For this reason the enterprise coverage

provisions of both the prior and the amended Act are discussed in the following sections of this subpart.

§ 779.237 Enterprise engaged in commerce or in the production of goods for commerce.

Under section 3(s) the "enterprise" to be covered must be an "enterprise engaged in commerce or in the production of goods for commerce." This is defined in section 3(s) as follows:

Enterprise engaged in commerce or in the production of goods for commerce means an enterprise which has employees engaged in commerce or in the production of goods for commerce, including employees handling, selling or otherwise working on goods that have been moved in or produced for commerce by any person * * *.

In order for an enterprise to come within the coverage of the Act, it must, therefore, be established that the enterprise has some employees who are:

- (a) Engaged in commerce or in the production of goods for commerce, including
- (b) Employees handling, selling or otherwise working on goods that have been moved in or produced for commerce by any person.

The legislative history of the 1966 amendments does not indicate a difference between the meaning of the above wording and the wording used in the prior Act. (See § 779.22.) For a complete discussion of the employees who come within the quoted language see subpart B of the Interpretative Bulletin on general coverage, part 776 of this chapter.

§ 779.238 Engagement in described activities determined on annual basis.

As set forth in the preceding section an enterprise to be a "covered enterprise" must have at least some employees engaged in certain described activities. This requirement will be determined on an annual basis in order to give full effect to the intent of Congress. Thus, it is not necessary that the enterprise have two or more employees engaged in the named activities every week. An enterprise described in section 3(s)(1) or (5) of the prior Act or in section 3(s)(1) of the Act as it was amended in 1966 will be considered to

have employees engaged in commerce or in the production of goods for commerce, including the handling, selling or otherwise working on goods that have been moved in or produced for commerce by any person, if during the annual period which it uses in calculating its annual sales for purposes of the other conditions of these sections, it regularly and recurrently has at least two or more employees engaged in such activities. On the other hand, it is plain that an enterprise that has employees engaged in such activities only in isolated or sporadic occasions, will not meet this condition.

§ 779.239 Meaning of “engaged in commerce or in the production of goods for commerce.”

The term “engaged in commerce or in the production of goods for commerce,” as used in section 3(s) of the Act in reference to employees who are so engaged is the same as the term which has been used in the Act for many years. The statutory definitions of these terms are set forth in §§ 779.12 through 779.16. The interpretative bulletin on general coverage part 776 of this chapter) contains the Division’s interpretations as to which employees are “engaged in commerce or in the production of goods for commerce.” These interpretations are equally applicable under section 3(s) in determining which employees are “engaged in commerce or in the production of goods for commerce” within the meaning of this section. A brief discussion of the guiding principles of retail or service establishments are “engaged in commerce or in the production of goods for commerce” is set forth in subpart B of this part.

EMPLOYEES HANDLING, SELLING, OR OTHERWISE WORKING ON GOODS THAT HAVE BEEN MOVED IN OR PRODUCED FOR COMMERCE BY ANY PERSON

§ 779.240 Employees “handling * * * or otherwise working on goods.”

(a) “Goods” upon which the described activities are performed. Employees will be considered to be handling, selling, or otherwise working on goods within the meaning of section 3(s) if they engage in the described activities on “goods” which “have been moved in or produced

for commerce by any person.” They may be handling or working on such goods which the enterprise does not sell. The term “goods” is defined in section 3(i) of the Act. The definition is explained in § 779.107 and discussed comprehensively in part 776 of this chapter. As defined in section 3(i) of the Act, the term includes any part or ingredient of “goods” and, in general, includes “articles or subjects of commerce of any character.” Thus the term “goods,” as used in section 3(s), includes all goods which have been moved in or produced for commerce, such as stock-in-trade, or raw materials that have been moved in or produced for commerce.

(b) “Handling * * * or otherwise working on goods.” The term “handling * * * or otherwise working on goods” used in section 3(s) is substantially the same as the term used since 1938 in section 3(j) of the Act. Both terms will therefore be considered to have essentially the same meaning. (See part 776 of this chapter, the interpretative bulletin on the general coverage of the Act.) Thus, the activities encompassed in the term “handling or in any other manner working on goods” in section 3(s) are the same as the activities, encompassed in the similar term in section 3(j), by which goods are “produced” within the meaning of the Act. In general, the term “handling * * * or otherwise working on goods” includes employees who sort, screen, grade, store, pack, label, address, transport, deliver, print, type, or otherwise handle or work on the goods. The same will be true of employees who handle or work on “any part of ingredient of the goods” referred to in the discussion of the term “goods” in § 779.107. An employee will be considered engaged in “handling * * * or otherwise working on goods,” within the meaning of section 3(s), only if he performs the described activities on goods that “have been moved in or produced for commerce by any person.” This requirement is discussed in §§ 779.242 and 779.243.

§ 779.241 Selling.

The statutory definition of the term “sale” or “sell” is quoted in § 779.15. As