

## § 570.105

In determining the applicability of this provision, consideration of the meaning of the terms used is necessary. These terms are discussed in §§ 570.105 to 570.111, inclusive.

### § 570.105 “Producer, manufacturer, or dealer”.

It will be observed that the prohibition of section 12(a) with respect to certain shipments or deliveries for shipment is confined to those made by producers, manufacturers, and dealers. The terms “producer, manufacturer, or dealer” used in this provision are not expressly defined by the statute. However, in view of the definition of “produced” in section 3(j), for purposes of this section a “producer” is considered to be one who engages in producing, manufacturing, handling or in any other manner working on goods in any State.<sup>5</sup> Since manufacturing is considered a specialized form of production, the word “manufacturer” does not have as broad an application as the word “producer.” Manufacturing generally involves the transformation of raw materials or semifinished goods into new or different articles. A person may be considered a “manufacturer” even though his goods are made by hand, as is often true of products made by homeworkers. Moreover, it is immaterial whether manufacturing is his sole or main business. Thus, the term includes retailers who, in addition to retail selling, engage in such manufacturing activities as the making of slip-covers or curtains, the baking of bread, the making of candy, or the making of window frames. The word “dealer” refers to anyone who deals in goods (as defined in section 3(i) of the Act),<sup>6</sup> including persons engaged in buying, selling, trading, distributing, delivering, etc. It includes middlemen, factors, brokers, commission merchants, wholesalers, retailers and the like.

### § 570.106 “Ship or deliver for shipment in commerce”.

(a) Section 12(a) forbids producers, manufacturers, and dealers to “ship or

<sup>5</sup>For a discussion of the definition of “produced” as it relates to section 12(a), see § 570.108.

<sup>6</sup>See § 570.107.

## 29 CFR Ch. V (7–1–10 Edition)

deliver for shipment in commerce” the goods referred to therein. A producer, manufacturer, or dealer may “ship” goods in commerce either by moving them himself in interstate or foreign commerce or by causing them to so move, as by delivery to a carrier.<sup>7</sup> Thus, a baker “ships” his bread in commerce whether he carries it in his own truck across State lines or sends it by contract or common carrier to his customers in other States. The word “ship” must be applied in its ordinary meaning. For example, it does not apply to the transmission of telegraphic messages.<sup>8</sup>

(b) To “deliver for shipment in commerce” means to surrender the custody of goods to another under such circumstances that the person surrendering the goods knows or has reason to believe that the goods will later be shipped in commerce.<sup>9</sup> Typical is the case of a Detroit manufacturer who delivers his goods in Detroit to a distributor who, as the manufacturer is well aware, will ship the goods into another State. A delivery for shipment in commerce may also be made where raw materials are delivered by their producer to a manufacturer in the same State who converts them into new products which are later shipped across State lines. If the producer in such case is aware or has reason to believe that the finished products will ultimately be sent into another State, his delivery of the raw materials to the manufacturer is a delivery for shipment in commerce. Another example is a paper box

<sup>7</sup>Section 3(b) of the Act defines “commerce” to mean “trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.”

<sup>8</sup>*Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490.

<sup>9</sup>*Tobin v. Grant*, N. D. Calif., 79 Sup. 975 which was a suit for injunction by the Secretary of Labor against a manufacturer of books and book covers employing oppressive child labor. The facts showed that the manufactured articles sold by defendant to purchasers in the same State had an ultimate out-of-State destination which was manifest to defendant. The court construed the words “deliver for shipment in commerce” as sufficiently broad to cover this situation even though the purchasers acquired title to the goods.

manufacturer who ships a carton of boxes to a fresh fruit or vegetable packing shed within the same State, with knowledge or reason to believe that the boxes will there be filled with fruits or vegetables and shipped outside the State. In such case the box manufacturer has delivered the boxes for shipment in commerce.

#### § 570.107 "Goods".<sup>10</sup>

(a) Section 12(a) prohibits the shipment or delivery for shipment in commerce of "any goods" produced in an establishment which were removed within 30 days of the employment there of oppressive child labor. It should be noted that the statute does not base the prohibition of section 12(a) upon the percentage of an establishment's output which is shipped in commerce.

(b) The Act furnishes its own definition of "goods" in section 3(i), as follows:

*Goods* means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

The term includes such things as foodstuffs, clothing, machinery, printed materials, blueprints and also includes intangibles such as news, ideas, and intelligence. The statute expressly excludes goods after their delivery into the actual physical possession of an ultimate consumer other than a producer, manufacturer, or processor thereof. Accordingly, such a consumer may lawfully ship articles in his possession although they were ineligible for shipments (commonly called "hot goods") before he received them.<sup>11</sup>

<sup>10</sup>The term *goods* is discussed in more detail in 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.

<sup>11</sup>For a discussion of the exclusionary clause in section 3(i) of the Act, see *Powell et al. v. United States Cartridge Co.*, 70 S. CT. 755.

#### § 570.108 "Produced".

The word "produced" as used in the Act is defined by section 3(j) to mean:

\* \* \* produced, manufactured, mined, handled, or in any other manner worked on in any state; \* \* \*<sup>12</sup>

(a) The prohibition of section 12(a) cannot apply to a shipment of goods unless those goods (including any part or ingredient thereof) were actually "produced" in and removed from an establishment where oppressive child labor was employed. This provision is applicable even though the under-age employee does not engage in the production of the goods themselves if somewhere in the establishment in or about which he is employed goods are "produced" which are subsequently shipped or delivered for shipment in commerce. In contrast to this restrictive requirement of section 12(a), it will be noted that the employees covered under the wage and hours provisions as engaged in the production of goods for commerce are not limited to those in or about establishments where such goods are being produced. If the requisite relationship<sup>13</sup> to production 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.<sup>14</sup>

(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

<sup>12</sup>The remaining portion of section 3(j) provides: " \* \* \* and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State."

<sup>13</sup>See footnote 12.

<sup>14</sup>See 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.