



UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington, DC 20210



August 31, 2023

FIELD ASSISTANCE BULLETIN No. 2023-03

**MEMORANDUM FOR: Regional Administrators
District Directors**

**FROM: Jessica Looman
Principal Deputy Administrator**

**SUBJECT: Prohibitions against the shipment of “Hot Goods” under the
Child Labor Provisions of the Fair Labor Standards Act**

The federal child labor provisions, authorized by the Fair Labor Standards Act (FLSA), ensure that when children work, the work is safe and does not jeopardize their health, well-being, or educational opportunities. As part of its child labor enforcement efforts, the Wage and Hour Division (WHD) is committed to utilizing all available enforcement tools to combat oppressive child labor. One such tool is the “hot goods” provision of section 212(a) of the FLSA.

FLSA Section 212(a) prohibits the shipment of “hot goods,” i.e., goods that were produced in an establishment in or about which oppressive child labor occurred. “Oppressive child labor” is broadly defined in the FLSA and includes any violation of the Department’s Child Labor Regulations and Orders (codified at 29 C.F.R. Part 570). If oppressive child labor occurred “in or about” an establishment, then the products produced at that establishment may be “hot” regardless of whether the children in question worked directly on the goods themselves.

Hot goods are barred from being shipped in interstate commerce. Where hot goods are found, WHD may request that a business voluntarily refrain from shipping the goods until the violation has been remedied. If the business does not voluntarily withhold goods from shipment, the Department may file a civil action in U.S. District Court to enjoin the shipment of goods, including through a temporary restraining order, preliminary injunction, or permanent injunction.

The law also prevents subsequent downstream shipment of such goods if the goods were removed from the producing establishment in the 30 days following a child labor violation. DOL

has the authority to seek a court order compelling any downstream producers, manufacturers, or dealers in possession of the goods, to stop shipment. The Department, therefore, may notify anyone who may receive or purchase the hot goods that further shipment of those goods may violate section 212(a) of the FLSA.

To ensure compliance throughout the supply chain, the Department may assess civil money penalties and may also seek other remedies, including enhanced compliance terms, before lifting objections to the shipment of hot goods.

FLSA section 212(a) establishes a good faith defense solely for purchasers who acquire goods for value, in good faith and in reliance on written assurances from the producer, manufacturer, or dealer that the specific goods were produced in compliance with the FLSA child labor provisions, and without any other notice of child labor violations having occurred. A purchaser who acquires goods after becoming aware of child labor violations generally will not qualify for the good faith defense. Additionally, a purchaser that does not receive actual written assurance from the producer, manufacturer, or dealer, cannot claim the good faith defense. Similarly, a purchaser that receives written assurance of compliance after acquiring the goods cannot raise the good faith defense. Written assurances can apply only to goods that have already been produced—written assurances with respect to the future production of goods do not qualify for the good faith defense. Finally, a purchaser’s reliance is not in good faith if they knew or had reason to know that the written assurance was inaccurate. For example, a purchaser that knows or has reason to know that its supplier has sold “hot goods” in the past but does nothing to assure that the current goods they are acquiring from the supplier are not hot, will not qualify for the “good faith” defense.

The goods covered include all: wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof...; which includes such things as food, clothing, machinery, and printed materials, as well as news, ideas, intelligence, and other intangibles; and also any raw materials, parts, or ingredients that will be used, processed, or converted into a new product. Production of the goods includes any: production, manufacturing, mining, or handling, as well as the sorting, storing, packing, handling, or labeling of goods that have already been manufactured.

A covered establishment is a physical place where goods are produced that is situated in the United States. A minor is employed in an establishment when they perform at least some of their occupational duties on the premises, regardless of whether they are employed by the actual owner or operator of the establishment. A minor is employed about an establishment if they perform their occupational duties close in proximity to the establishment, and the minor’s occupation is directly related to the activities carried on in the producing establishment.

Goods that are removed from the establishment where they are produced within 30 days of the occurrence of a child labor violation are “hot” upon their removal and are thereafter barred from shipment or delivery. Goods are considered to be removed as soon as they are physically moved from the establishment, including transporting the goods for immediate shipment in commerce; however, this can also include moving goods away from the establishment for a purpose other than their immediate shipment. The shipment or delivery prohibited includes: a party physically transporting goods themselves, or having the goods transported by a third-party common carrier or delivery service; as well as a party giving the goods to a distributor or other party if they know or have reason to believe that the other party will subsequently ship the goods.

Businesses covered by the hot goods provision as producers, manufacturers, or dealers include anyone who: engages in producing, manufacturing, handling, or in any other manner working on goods in any state; or engages in the transformation of raw materials or semi-finished goods into new or different articles; or buys, sells, trades, distributes, delivers, or deals in goods, such as a broker, wholesaler, or retailer.

This Field Assistance Bulletin (FAB) provides guidance to WHD field staff on “hot goods” requirements pertaining to child labor under section 212(a) of the FLSA, as well as the DOL’s authority to utilize the hot goods provision as an enforcement tool for child labor violations.

BACKGROUND

WHD reviews child labor compliance as part of every FLSA investigation, investigates every child labor complaint it receives, and conducts agency-initiated child labor investigations. Since 2018, WHD investigations have found a 69 percent increase in children being employed in violation of the child labor provisions of the FLSA. In fiscal year 2022, WHD found that 835 of the employers it investigated had violated child labor laws impacting more than 3,800 children.

The child labor hot goods provision of the FLSA is an effective enforcement tool that WHD uses to address oppressive child labor and ensure compliance with the law.

GUIDANCE

FLSA Section 212(a) prohibits the shipment of “hot goods,” i.e., goods that were produced in an establishment in or about which oppressive child labor occurred. Hot goods that are removed from the establishment within 30 days of the last instance of oppressive child labor are barred from being shipped in interstate commerce. Where hot goods are detected, WHD may request that a business voluntarily refrain from shipping the goods until the violation has been remedied. DOL also has the authority to seek a court order compelling the producer, as well as any downstream producers, manufacturers, or dealers in possession of the goods, to stop shipment.

WHD may also assess civil money penalties for hot goods violations under certain circumstances.

Required Elements

FLSA Section 212(a) states: “No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed....” 29 U.S.C. § 212(a).

“Producer, Manufacturer, or Dealer”

Section 212(a) applies to a “producer, manufacturer, or dealer” of hot goods. The term “producer” is defined broadly as someone “who engages in producing, manufacturing, handling, or in any other manner working on goods in any state.” 29 C.F.R. 570.105.

“Manufacturer” is someone who engages in the “transformation of raw materials or semi-finished goods into new or different articles.” This includes someone who makes goods by hand, as well as someone who engages in both retail and manufacturing, such as a baker who sells bread. 29 C.F.R. 570.105.

“Dealer” is someone who buys, sells, trades, distributes, delivers, or deals in goods, such as a broker, wholesaler, or retailer. 29 C.F.R. 570.105.

For example, a small bakery that uses flour and other ingredients to bake bread may be considered a “manufacturer” or a “producer.” If the bakery ships the bread to a distributor who then sells or delivers the bread to retail stores, the distributor may be considered a “dealer.”

“Ship or Deliver for Shipment in Commerce”

Section 212(a) prohibits the shipment or delivery for shipment of hot goods in commerce.

“Ship” refers to a party physically transporting goods themselves, or having the goods transported by a third-party common carrier or delivery service. 29 C.F.R. 570.106.

“Deliver for shipment” refers to a party giving the goods to a distributor or other party if they know or have reason to believe that the other party will subsequently ship the goods. 29 C.F.R. 570.106.

“Commerce” is defined as “trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.” 29 U.S.C. § 203(b). Generally, goods that are moving in or out of a state are considered to be traveling in commerce, including any portion of movement within the same state that is part of a larger interstate movement of goods. For example, the shipment of goods from a producer’s factory to a third-party distributor within the same state can be considered part of interstate commerce if the distributor intends to ship the goods on to retail establishments in different states.

Generally, goods are no longer moving in interstate commerce once they have reached their final destination with the ultimate consumer.

“Goods”

Section 203(i) defines “goods” as “wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof...” 29 U.S.C. § 203(i). This includes such things as food, clothing, machinery, and printed materials, as well as news, ideas, intelligence, and other intangibles. 29 C.F.R. 570.107. This also includes any raw materials, parts, or ingredients that will be used, processed, or converted into a new product.

Where a hot good has been incorporated as a component of a new product, the entire new product will also become a hot good. For example, buttons produced at a factory in or about which child labor violations occurred are hot goods. If the buttons are removed from the factory within 30 days after the last child labor violation occurred, and are subsequently shipped to a clothing producer who sews the buttons onto shirts, then the shirts become hot goods.

Additionally, the commingling of hot goods with other goods will make all the goods hot. For example, if t-shirts that were produced at a factory where child labor violations occurred within 30 days of removal are stored at a third-party distributor’s warehouse and mixed with t-shirts from other factories, then all the t-shirts will be considered hot goods. In order to ship the t-shirts that are not hot, the distributor would need to be able to clearly separate the hot goods t-shirts from the other t-shirts.

“Produced”

Section 212(a) applies to goods “produced” at an establishment in or about which oppressive child labor occurred. “Produced” is defined broadly to include the production, manufacturing, mining, or handling of goods. 29 U.S.C. § 203(j). This includes the handling, sorting, storing, packing, or labeling of goods that have already been manufactured. 29 C.F.R. 570.108.

“In or About” an “Establishment”

Section 212(a) applies when a minor is engaged in oppressive child labor “in or about” an establishment. A minor is employed “in” an establishment when they perform at least some of their occupational duties on the premises, regardless of whether they are employed by the actual owner or operator of the establishment. 29 C.F.R. 570.110. This does not include situations where the minor only visits an establishment for short periods of time or for the sole purpose of picking up or delivering messages or small packages and is not employed by the owner or operator of the establishment. 29 C.F.R. 570.110.

A minor is employed “about” an establishment if they perform their occupational duties close in proximity to the establishment, and the minor’s occupation is directly related to the activities carried on in the producing establishment. For example, a minor that regularly loads products onto a truck outside the factory where the products were produced may be considered employed “in or about” such establishment, regardless of whether they enter the factory itself. 29 C.F.R. 570.110.

The term “establishment” refers to a physical place where goods are produced. An establishment may extend over an area of several square miles, such as a farm or logging operation, or may be confined to a few square feet, such as an individual workshop. Furthermore, an establishment need not have a permanently fixed location. For example, a boat that is used to catch fish may be considered an establishment for purposes of section 212(a). 29 C.F.R. 570.109.

“Within Thirty Days Prior to Removal”

Section 212(a) applies when a child labor violation has occurred within 30 days prior to the removal of goods from an establishment. Goods that are removed from an establishment within 30-days of the occurrence of a child labor violation are “hot” upon their removal and are thereafter barred from shipment. 29 C.F.R. 570.111.

Goods are “removed” as soon as they are physically moved from the establishment, including transporting the goods for immediate shipment in commerce. 29 C.F.R. 570.111. “Removal,” however, can also include moving goods away from the establishment for a purpose other than their immediate shipment. 29 C.F.R. 570.111. For example, the transport of goods from the factory where they were produced to a storage or processing facility prior to their shipment in commerce can be considered “removal.”

“Oppressive Child Labor”

Section 212(a) prohibits the shipment of goods in commerce that were produced in establishments in or about which oppressive child labor occurred.

The FLSA defines “oppressive child labor” broadly. Different rules apply to agricultural and nonagricultural employment.

In nonagricultural employment, 16- and 17-year-olds are not permitted to perform work prohibited by hazardous occupations orders issued by the Wage and Hour Division. However, minors in this age group are not restricted in the number of hours or times of day they can work. *See* 29 U.S.C. 203(1); 29 C.F.R. 570.50-.68.

Fourteen and 15-year-olds employed in nonagricultural employment are only permitted to perform work that is specifically permitted by Wage and Hour regulations and only at certain times of the day and for limited hours per day and per week. *See* 29 C.F.R. 570.31-.35.

Children under the age of 14 are generally not permitted to work in nonagricultural employment except under limited circumstances, such as when they are employed by a parent or a person standing in place of a parent or when performing work such as acting or delivering newspapers to consumers. *See* 29 U.S.C. § 203(1), 29 C.F.R. 570.2(a)(2), 29 U.S.C. § 213(c)(3) & (d).

In agricultural employment, the FLSA permits minors who are at least 16 years of age to perform any farm job, including agricultural occupations declared hazardous by the Secretary of Labor, at any time, including during school hours. Fourteen- and 15-year-olds may work in nonhazardous occupations in agricultural employment, but only outside of school hours. 29 U.S.C. 213(c)(1)-(2). 29 C.F.R. 570.70-72. Children under 14 may work in agricultural employment under certain circumstances. 29 U.S.C. § 213(c)(1)(A) & (B), 213(c)(2). 29 C.F.R. 570.2(b).

Therefore, “oppressive child labor” may include:

- The employment of a 16- or 17-year-old in hazardous non-agricultural occupations prohibited under 29 C.F.R. 570 Subpart E;
- The employment of a 14- or 15-year-old in hazardous agricultural occupations prohibited under 29 C.F.R. 570 Subpart E-1;
- The employment of a 14- or 15-year-old in occupations not permitted under 29 C.F.R. 570.34;
- The employment of a 14- or 15-year-old during hours not permitted under 29 C.F.R. 570.35; and
- The employment of a child under the legal age of employment under 29 C.F.R. 570.2(a) & (b).

Example 1:

A poultry processing company operates a facility where it slaughters, slices, and packages poultry products. The company ships the poultry products directly from its facility to large chain grocery stores located in multiple different states.

The company employed several minors to work at its facility during the summer months of June through August. These minors regularly operated mechanical meat slicers and other meat processing machines prohibited as hazardous occupations under 29 C.F.R. 570.61. The minors stopped working at the end of August. No other child labor violations occurred after August.

Based on this example, the poultry processing company used oppressive child labor from June to August and because it is a producer, the company is prohibited under Section 212(a) from shipping the finished poultry products from its facility for 30 days following the last child labor violation in August. In addition, any goods that are shipped before the end of the 30-day period following the last child labor violation remain hot while in the supply chain until the goods come to rest.

Example 2:

Company A operates a button factory where it produces buttons for Company B, a large clothing manufacturer. The buttons are produced at Company A's factory and are then transported to Company B's facility located within the same state. Company B incorporates the buttons into the pants and shirts being manufactured at its facility, and then ships the finished clothing products to retail stores in multiple different states.

Company A contracts with Company C, a cleaning company, to provide cleaning services at Company A's factory. Company C employs several 14- and 15-year-olds to perform cleaning work at the factory. The 14- and 15-year-olds work at the factory throughout the entire year and regularly work until 11 pm in violation of the hours standards under 29 C.F.R. 570.35(a).

Based on this example, Company A is a producer and oppressive child labor occurred in its establishment and therefore the buttons are hot goods. Therefore, Company A is prohibited under Section 212(a) from shipping any of the buttons produced at the factory in the 30 days after the last child labor violation occurring at that establishment. If the goods have been removed before the end of the 30-day period, the buttons are hot goods and will remain barred from shipment in interstate commerce. The movement of the buttons from Company A's factory to Company B's facility within the same state is part of the larger movement of the goods in interstate commerce, as the buttons will be incorporated into shirts and pants which will subsequently be shipped out of state. Company B is also prohibited from shipping in interstate commerce the finished clothing products which incorporated the hot buttons, irrespective of the timing of the shipment.

Coverage

Section 212(a) prohibits the shipment of goods in commerce that were produced in establishments in or about which oppressive child labor occurred. Section 212(a) does not require that the minor employed in oppressive child labor was themselves engaged in commerce or in the production of goods for commerce, or was employed by an enterprise engaged in commerce or in the production of goods for commerce. Unlike other provisions of the FLSA, section 212(a) does not require that the minor be covered on an individual or enterprise basis.

For example, a 17-year-old is employed by a landscaping company. The company sends the minor to perform landscaping work at a clothing company's factory where goods are produced and eventually shipped out of state. As part of this job, the minor uses a power-driven saw to cut wood, which is a hazardous occupation under 29 C.F.R. 570.55, and therefore constitutes "oppressive child labor." Even if the minor is not themselves engaged in commerce or the production of goods for commerce and is not employed by an enterprise that is engaged in commerce or the production of goods for commerce, section 212(a) may still apply because oppressive child labor occurred in or about the establishment where the goods were produced. Therefore, even if the minor is employed by the landscaping company, not the clothing company, and the landscaping company is not engaged in commerce or the production of goods for commerce, section 212(a) may apply. Any goods produced at the clothing factory that are removed from the establishment within 30 days of the minor using the power-driven saw, or any other child labor violation, are considered "hot goods" and are thereafter barred from being shipped in commerce.

Good Faith Defense for the Purchase of Hot Goods

FLSA section 212(a) establishes a good faith defense for purchasers who acquire goods for value, in good faith and in reliance on written assurances from the producer, manufacturer, or dealer that the specific goods were produced in compliance with the FLSA child labor provisions, and without any other notice of child labor violations having occurred. Good faith purchasers who meet these elements are not prohibited from shipping goods under section 212(a). 29 U.S.C. § 212(a); 29 C.F.R. 570.141.

At the time that they acquire the goods, the purchaser must have relied in good faith on the written assurance of compliance with respect to the specific goods and must not have been otherwise aware of any child labor violations having occurred at the production establishment. A purchaser who acquires goods after becoming aware of child labor violations generally will not qualify for the good faith defense.

Additionally, a purchaser that does not receive actual written assurance from the producer, manufacturer, or dealer, cannot claim the good faith defense. For example, a stipulation in a purchase order that states that the sale of the goods to the purchaser constitutes a guarantee by the producer that the goods were produced in compliance with the FLSA, would not qualify for the good faith defense absent any additional written assurance from the producer. 29 C.F.R. 789.2.

Similarly, a purchaser that receives written assurance of compliance after acquiring the goods cannot raise the good faith defense. A purchaser cannot be said to have acquired the goods “in reliance on” the written assurance merely because the producer later provides assurance that the goods were produced in compliance with the FLSA. 29 C.F.R. 789.2. Furthermore, written assurances can apply only to goods that have already been produced. Written assurances with respect to the future production of goods do not qualify for the good faith defense. 29 C.F.R. 789.3.

Whether the purchaser relied on the written assurance in “good faith” and was not otherwise aware of any other violations is determined on a case-by-case basis and requires that the purchaser actually knew or believed that the written assurance of compliance was true and was not aware of any other child labor violations, and that the purchaser’s belief or understanding was objectively reasonable based on the circumstances. A purchaser’s reliance is not in good faith if they knew or had reason to know that the written assurance was inaccurate. 29 C.F.R. 789.5. For example, a purchaser that knows that its supplier has sold “hot goods” in the past but does nothing to assure that the current goods they are acquiring from the supplier are not hot, may not qualify for the “good faith” defense.

Enforcement and Remedies

The hot goods provision of section 212(a) of the FLSA is a necessary enforcement tool that WHD utilizes to secure compliance with federal child labor laws. When WHD finds oppressive child labor in an investigation and identifies goods that were produced in an establishment in or about which the oppressive child labor occurred, those goods are deemed to be hot and to remain so for the 30 days following the last instance of oppressive child labor (or, if removed before the end of this 30-day period, while the goods remain in commerce). WHD will explain the child labor findings to the employer (or producer, manufacturer, or dealer) and will advise them of steps that can be taken to correct the violations. These parties may be represented by an attorney or other representative at any point during the investigation and will have the opportunity to provide additional evidence or information to WHD concerning the child labor findings.

WHD may notify the producer, manufacturer, or dealer that section 212(a) prohibits the shipment of hot goods, and may request that the producer, manufacturer, or dealer voluntarily

refrain from shipping the goods until the child labor violation has been remedied. In such instances, WHD will provide these parties with a copy of [Fact Sheet #80](#), which provides an overview of the hot goods requirements under the FLSA. WHD will also provide an objection to shipment letter, which explains the child labor findings and informs the parties that if they refuse to voluntarily agree to withhold shipment, WHD may pursue legal action to stop the movement of the goods and may notify other downstream parties in the supply chain of the shipment restrictions.

If the producer, manufacturer, or dealer does not voluntarily withhold goods from shipment, the Department may file a civil action in U.S. District Court to enjoin the shipment of goods, including through a temporary restraining order, preliminary injunction, or permanent injunction. 29 CFR 570.140(a). The Department may also notify anyone who may receive or purchase the hot goods that further shipment of those goods may violate section 212(a). Civil money penalties may be assessed for the shipment or delivery of hot goods in commerce, *see* 29 C.F.R. 579.3(a)(1). To ensure compliance throughout the supply chain, the Department may also seek other remedies, including enhanced compliance terms before lifting objections to the shipment of hot goods.

Conclusion

WHD is committed to combatting oppressive child labor by using all appropriate enforcement tools, including the hot goods provision of section 212(a).

Please address any questions regarding this FAB to the WHD National Office, Office of Policy, through appropriate channels.