

mentioned above, the following is suggested as a guide for the type of language which would appear to provide the maximum degree of certainty that a purchaser who acquired the goods in good faith in reliance on the written assurance would receive the protection intended by the amendments:

We hereby certify that these goods were produced in compliance with all applicable requirements of sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under section 14 thereof:

The question has also arisen as to what method should be used to give a purchaser a proper written assurance which would adequately identify the particular goods to which such assurance relates. Although other means of giving proper written assurances may be found to be more practical and convenient, it appears that one simple and feasible method of giving such assurance is for the producer to stamp or print the assurance on the invoice which covers the particular goods and which is given to the purchaser as a part of the transaction whereby the goods are acquired.

**§ 789.5 “\* \* \* acquired \* \* \* in good faith \* \* \* for value without notice \* \* \*”**

Section 12(a) and section 15(a)(1) of the Act provide that a purchaser must acquire the goods in good faith in reliance on the specified written assurance in order to be accorded the statutory protection.

The legislative history of the amendments indicates that a purchaser's good faith is not to be determined merely from the actual state of his mind but that good faith also depends upon an objective test—that of what a “reasonable, prudent man, acting with due diligence, would have done in the circumstances.” This good faith requirement is, in the words of the House Managers, “comparable to similar requirements imposed on purchasers in other fields of law.” The final determination of what will amount to good faith can be made only upon the basis of the pertinent facts in each situation. It is clear, however, that good faith as used in the Act, not only requires hon-

esty of intention but also that a purchaser must not know, have reason to know, or have knowledge of circumstances which ought to put him on inquiry that the goods in question were produced in violation of any of the provisions of the Act referred to in sections 12(a) and 15(a)(1).

These good faith provisions are reinforced by the requirement in sections 12(a) and 15(a)(1) that the purchaser must also acquire his goods “for value without notice” of an applicable violation of the Act.

To illustrate the application of the above principles, let us assume that a purchaser of goods for value acquires them in reliance upon a written assurance from the producer, manufacturer, or dealer that the particular goods were produced in compliance with all applicable requirements of the Act, and that the form and content of the assurance is sufficient to meet the conditions of sections 12 and 15(a)(1) of the Act. If a reasonable, prudent man in the purchaser's position, acting with the diligence, would have no reason to question the truth of the assurance that the applicable requirements has been complied with, the purchaser's reliance on such written assurance would be considered to be in good faith and without notice of any violation, and the purchaser would be protected in the event that violations of the child-labor or the wage-hour standards of the Act had actually occurred in the production of such goods by the vendor or by prior producers of the goods. In such circumstances, the purchaser's protection would not be contingent on his securing separate written assurances from the prior producers or on his assuring himself that his vendor had secured specific guarantees from them with respect to compliance.

**PART 790—GENERAL STATEMENT AS TO THE EFFECT OF THE PORTAL-TO-PORTAL ACT OF 1947 ON THE FAIR LABOR STANDARDS ACT OF 1938**

GENERAL

- Sec.
- 790.1 Introductory statement.
- 790.2 Interrelationship of the two Acts.