

§ 43. Walsh-Healey provisions not applicable to certain contracts

Sections 35 to 45 of this title shall not apply to purchases of such materials, supplies, articles, or equipment as may usually be bought in the open market; nor shall they apply to perishables, including dairy, livestock and nursery products, or to agricultural or farm products processed for first sale by the original producers; nor to any contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof. Nothing in said sections shall be construed to apply to carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect or to common carriers subject to the Communications Act of 1934 [47 U.S.C. 151 et seq.].

(June 30, 1936, ch. 881, § 9, 49 Stat. 2039.)

REFERENCES IN TEXT

The Communications Act of 1934, referred to in text, is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§151 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code see section 609 of Title 47 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43a of this title; title 25 section 450j.

§ 43a. Administrative procedure provisions

(a) Applicability

Notwithstanding any provision of section 553 of title 5, subchapter II of chapter 5, and chapter 7, of title 5 shall be applicable in the administration of sections 35 to 39 and 41 to 43 of this title.

(b) Wage determination; administrative review

All wage determinations under section 35(a) of this title shall be made on the record after opportunity for a hearing. Review of any such wage determination, or of the applicability of any such wage determination, may be had within ninety days after such determination is made in the manner provided in chapter 7 of title 5 by any person adversely affected or aggrieved thereby, who shall be deemed to include any supplier of materials, supplies, articles or equipment purchased or to be purchased by the Government from any source, who is in any industry to which such wage determination is applicable.

(c) Judicial review

Notwithstanding the inclusion of any stipulations required by any provision of sections 35 to 45 of this title in any contract subject to said sections, any interested person shall have the right of judicial review of any legal question which might otherwise be raised, including, but not limited to, wage determinations and the interpretation of the terms "locality" and "open market".

(June 30, 1936, ch. 881, §10, as added June 30, 1952, ch. 530, title III, §301, 66 Stat. 308; amended Pub. L. 103-355, title VII, §7201(2), (3), Oct. 13, 1994, 108 Stat. 3378; Pub. L. 104-106, div. D, title XLIII, §4321(f)(2), Feb. 10, 1996, 110 Stat. 675.)

CODIFICATION

"Section 553 of title 5", "subchapter II of chapter 5, and chapter 7, of title 5", and "chapter 7 of title 5" sub-

stituted for "section 1003 of title 5", "such Act [meaning the Administrative Procedure Act]", and "section 1009 of title 5", respectively, on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 10 of act June 30, 1936, was renumbered section 12, and is classified to section 44 of this title.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-106, §4321(f)(2)(A), substituted "section 35(a)" for "section 35(b)".

Subsec. (c). Pub. L. 104-106, §4321(f)(2)(B), struck out comma after "locality".

1994—Subsec. (b). Pub. L. 103-355, §7201(2), substituted "supplier of materials" for "manufacturer of, or regular dealer in, materials".

Subsec. (c). Pub. L. 103-355, §7201(3), struck out "regular dealer", "manufacturer", before "and 'open market'".

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 450j.

§ 43b. Manufacturers and regular dealers

(a) The Secretary of Labor may prescribe in regulations the standards for determining whether a contractor is a manufacturer of or a regular dealer in materials, supplies, articles, or equipment to be manufactured or used in the performance of a contract entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States, for the manufacture or furnishing of materials, supplies, articles, and equipment.

(b) Any interested person shall have the right of judicial review of any legal question regarding the interpretation of the terms "regular dealer" and "manufacturer", as defined pursuant to subsection (a) of this section.

(June 30, 1936, ch. 881, §11, as added Pub. L. 103-355, title VII, §7201(4), Oct. 13, 1994, 108 Stat. 3378; amended Pub. L. 104-106, div. D, title XLIII, §4321(f)(1)(A), Feb. 10, 1996, 110 Stat. 675.)

PRIOR PROVISIONS

A prior section 11 of act June 30, 1936, was renumbered section 12, and is classified to section 44 of this title.

Another prior section 11 of act June 30, 1936, was renumbered section 13, and is classified to section 45 of this title.

AMENDMENTS

1996—Pub. L. 104-106 transferred section in original so as to appear after section 43a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.