

“Congress submitted the administration of the Act to the judgment of the Secretary of Labor, not to the judgment of the courts.” An amendment to the Act in 1952 added specific provisions for judicial review (see section 10). The Secretary has promulgated regulations to carry out provisions of the Act, which are set forth elsewhere in this chapter (Part 50-201 (General Regulations); Part 50-202 (Minimum Wage Determinations); Part 50-203 (Rules of Practice); and Part 50-204 (Safety and Health Standards)). The Secretary of Labor has delegated to the Administrator of the Wage and Hour Division through the Assistant Secretary for Employment Standards the authority to promulgate regulations and to issue official rulings and interpretations. So long as such regulations, rulings, and interpretations are not modified, amended, rescinded, or determined by judicial authority to be incorrect, they may be relied upon as provided in section 10 of the Portal-to-Portal Act of 1947 (61 Stat. 84, 29 U.S.C. 251, et seq., discussed in 29 CFR part 790). Furthermore, these interpretations are intended to indicate the construction of the law which the Department of Labor believes to be correct and which will be followed in the administration of the Act unless and until directed otherwise by Act of Congress or by authoritative rulings of the courts. (“*Skidmore v. Swift & Co.*”, 323 U.S. 134 (1944), “*Roland Co. v. Walling*”, 326 U.S. 657 (1946); “*Endicott Johnson Corp. v. Perkins, supra*”, and “*Perkins v. Lukens Steel Co., supra*”.)

(b) The courts have held that the “interpretations of the Walsh-Healey Act and the regulations adopted thereunder, as made by the Secretary of Labor acting through his Administrator, are both correct and reasonable.” (“*Jno. McCall Coal Company v. United States*,” 374 F. 2d 689, 692 (C.A. 4, 1967); see also “*United States v. Davison Fuel and Dock Company*,” 371 F. 2d 705, 711-714 (C.A. 4, 1967).) These policies are designed to protect not only employees but also the competitive interest of all firms qualified to compete for covered contracts.

[43 FR 22975, May 30, 1978. Redesignated at 61 FR 40716, Aug. 5, 1996]

§ 50-201.3 Insertion of stipulations.

Except as hereinafter directed, in every contract made and entered into by an 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, the contracting officer shall cause to be inserted or incorporated by reference in such invitation or the specifications and in such contract, the following stipulations:

REPRESENTATIONS AND STIPULATIONS PURSUANT TO PUBLIC LAW 846, 74TH CONGRESS, AS AMENDED

(a) All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract.

(b) No person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of 40 hours in any 1 week unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor: *Provided, however*, That the provisions of this stipulation shall not apply to any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs 1 or 2 of subsection (b) of section 7 of an act entitled “The Fair Labor Standards Act of 1938”: *Provided, further*, That in the case of such an employer, during the life of the agreement referred to the applicable overtime rate set by the Secretary of Labor shall be paid for hours in excess of 12 in any 1 day or in excess of 56 in any 1 week and if such overtime is not paid, the employer shall be required to compensate his employees during that week at the applicable overtime rate set by the Secretary of Labor for hours in excess of 40 in any 1 week.

(c) No person under 16 years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies,

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articles, or equipment included in the contract.

(d) No part of the contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima facie evidence of compliance with this paragraph.

(e) Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of \$10 per day for each person under 16 years of age, or each convict laborer knowingly employed in the performance of the contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of the contract; and, in addition, the agency of the United States entering into the contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of the contract as set forth herein may be withheld from any amounts due on the contract or may be recovered in a suit brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: *Provided*, That no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

(f) The contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the regulations under the act available for inspection by authorized representatives of the Secretary of Labor.

(g) The contractor is not a person who is ineligible to be awarded Government con-

tracts by virtue of sanctions imposed pursuant to the provisions of section 3 of the act.

(h) No part of the contract shall be performed and none of the materials, articles, supplies or equipment manufactured or furnished under the contract shall be manufactured or furnished by any person found by the Secretary of Labor to be ineligible to be awarded Government contracts pursuant to section 3 of the act.

(i) The foregoing stipulations shall be deemed inoperative if this contract is for a definite amount not in excess of \$10,000.

[7 FR 4494, June 16, 1942, as amended at 7 FR 11086, Dec. 30, 1942; 11 FR 6238, June 8, 1946. Redesignated at 24 FR 10952, Dec. 30, 1959, and amended at 27 FR 306, Jan. 11, 1962; 27 FR 4556, May 12, 1962; 34 FR 6687, Apr. 19, 1969; 34 FR 7451, May 8, 1969; 51 FR 12266, Apr. 9, 1986. Redesignated and amended at 61 FR 40716, Aug. 5, 1996]

§ 50-201.4 Statutory exemptions.

Inclusion of the stipulations enumerated in § 50-201.1 is not required in the following instances:

(a) Where the contracting officer is authorized by the express language of a statute to purchase "in the open market", or where a purchase of articles, supplies, materials or equipment, either in being or virtually so, is made without advertising for bids under circumstances bringing such purchase within the exception to the General Purchase Statute, R.S. 3709, that is, where immediate delivery is required by the public exigency.

(b) Where the contract relates to perishables, including dairy, livestock, and nursery products ("perishables" covers products subject to decay or spoilage and not products canned, salted, smoked, or otherwise preserved);

(c) Where the contract relates to agricultural or farm products processed for first sale by the original producers;

(d) Where the contract is by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof;

(e) Where the contract is with a common carrier for carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line, where published tariff rates are in effect;

(f) Where the contract is for the furnishing of service by radio, telephone, telegraph, or cable companies, subject to the Federal Communications Act of