

**§ 6505. Exclusions**

(a) **ITEMS AVAILABLE IN THE OPEN MARKET.**—This chapter does not apply to the purchase of materials, supplies, articles, or equipment that may usually be bought in the open market.

(b) **PERISHABLES AND AGRICULTURAL PRODUCTS.**—This chapter does not apply to any of the following:

- (1) Perishables, including dairy, livestock and nursery products.
- (2) Agricultural or farm products processed for first sale by the original producers.
- (3) Contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or products of agricultural commodities.

(c) **CARRIAGE OF FREIGHT OR PERSONNEL.**—This chapter may not be construed to apply to—

- (1) the carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect; or
- (2) common carriers subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.).

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3809.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
6505 .....	41:43.	June 30, 1936, ch. 881, § 9, 49 Stat. 2039.

REFERENCES IN TEXT

The Communications Act of 1934, referred to in subsec. (c)(2), is act June 19, 1934, ch. 652, 48 Stat. 1064, which is classified principally to chapter 5 (§151 et seq.) of Title 47, Telecommunications. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

**§ 6506. Administrative provisions**

(a) **IN GENERAL.**—The Secretary shall administer this chapter.

(b) **REGULATIONS.**—The Secretary may make, amend, and rescind regulations as necessary to carry out this chapter.

(c) **USE OF GOVERNMENT OFFICERS AND EMPLOYEES.**—The Secretary shall use Federal officers and employees and, with a State’s consent, State and local officers and employees as the Secretary finds necessary to assist in the administration of this chapter.

(d) **APPOINTMENTS.**—The Secretary shall appoint an administrative officer and attorneys, experts, and other employees from time to time as the Secretary finds necessary for the administration of this chapter. The appointments are subject to chapter 51 and subchapter III of chapter 53 of title 5 and other law applicable to the employment and compensation of officers and employees of the Federal Government.

(e) **INVESTIGATIONS.**—The Secretary, or an authorized representative of the Secretary, may make investigations and findings as provided in this chapter and may, in any part of the United States, prosecute an inquiry necessary to carry out this chapter.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3809.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
6506 .....	41:38.	June 30, 1936, ch. 881, § 4, 49 Stat. 2038.

In subsection (b), the word “rules” is omitted as included in “regulations”.

In subsection (c), the words “and to prescribe rules and regulations with respect thereto” are omitted as unnecessary because of subsection (b).

In subsection (d), the words “without regard to the provisions of the civil-service laws”, which appear in section 4 of the Walsh-Healey Act (June 30, 1936, ch. 881, 49 Stat. 2038), are omitted as obsolete because of Executive Order 8743, April 23, 1941 (5 U.S.C. 3301 note), issued by the President pursuant to the Act of November 26, 1940, ch. 919, title I, §1, 54 Stat. 1211. The words “the Classification Act of 1923”, which appear in section 4 of the Walsh-Healey Act (June 30, 1936, ch. 881, 49 Stat. 2038), are considered to be a reference to the Classification Act of 1949 because of section 1106(a) of the Classification Act of 1949 (Oct. 28, 1949, ch. 782, 63 Stat. 972). The words “chapter 51 and subchapter III of chapter 53 of title 5” are substituted for the reference to the Classification Act of 1949 because of section 7(b) of Public Law 89–554 (5 U.S.C. note prec. 101).

**§ 6507. Hearing authority and procedures**

(a) **RECORD AND HEARING REQUIREMENTS FOR WAGE DETERMINATIONS.**—A wage determination under section 6502(1) of this title shall be made on the record after opportunity for a hearing.

(b) **AUTHORITY TO HOLD HEARINGS.**—The Secretary or an impartial representative designated by the Secretary may hold hearings when there is a complaint of breach or violation of a representation or stipulation included in a contract under section 6502 of this title. The Secretary may initiate hearings on the Secretary’s own motion or on the application of a person affected by the ruling of an agency of the United States relating to a proposal or contract under this chapter.

(c) **ORDERS TO COMPEL TESTIMONY.**—The Secretary or an impartial representative designated by the Secretary may issue orders requiring witnesses to attend hearings held under this section and to produce evidence and testify under oath. Witnesses shall be paid fees and mileage at the same rates as witnesses in courts of the United States.

(d) **ENFORCEMENT OF ORDERS.**—If a person refuses or fails to obey an order issued under subsection (c), the Secretary or an impartial representative designated by the Secretary may bring an action to enforce the order in a district court of the United States or in the district court of a territory or possession of the United States. A court has jurisdiction to enforce the order if the inquiry is being carried out within the court’s judicial district or if the person is found or resides or transacts business within the court’s judicial district. The court may issue an order requiring the person to obey the order issued under subsection (c), and the court may punish any further refusal or failure as contempt of court.

(e) **FINDINGS OF FACT.**—After notice and a hearing, the Secretary or an impartial representative designated by the Secretary shall make findings of fact. The findings are conclusive for agencies of the United States. If sup-

ported by a preponderance of the evidence, the findings are conclusive in any court of the United States.

(f) DECISIONS.—The Secretary or an impartial representative designated by the Secretary may make decisions, based on findings of fact, that are considered necessary to enforce this chapter. (Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3809.)

## HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
6507(a) .....	41:43a(b) (1st sentence).	June 30, 1936, ch. 881, §10(b) (1st sentence), as added June 30, 1952, ch. 530, title III, §301, 66 Stat. 308; Pub. L. 104-106, div. D, title XLIII, §4321(f)(2), Feb. 10, 1996, 110 Stat. 675.
6507(b)-(f) ..	41:39.	June 30, 1936, ch. 881, § 5, 49 Stat. 2038.

In subsection (d), the word “contumacy” is omitted as included in “refuses or fails”. The words “may bring an action to enforce the order” are substituted for “upon the application by” for consistency in the revised title and with other titles of the United States Code. The words “the United States District Court for the District of Columbia” in section 5 of the Act of June 30, 1936 (which were substituted for “the Supreme Court of the District of Columbia” by section 32(b) of the Act of June 25, 1948 (ch. 646, 62 Stat. 991), as amended by section 127 of the Act of May 24, 1949 (ch. 139, 63 Stat. 107), and which were editorially omitted from 41:39) are omitted as included in “a district court of the United States” because of sections 88 and 132(a) of title 28, United States Code. The words “within the court’s judicial district” are substituted for “within the jurisdiction of which” for clarity and for consistency in the revised title and with other titles of the United States Code. The words “requiring the person to obey the order issued under subsection (c)” are substituted for “requiring such person to appear before him or representative designated by him, to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question” for clarity and to eliminate unnecessary words.

In subsection (e), the duty to make findings of fact is restated as a duty of the Secretary (or the Secretary’s representative). The grammatical structure of the last sentence of 41:39 seems to suggest that the court, rather than the Secretary (or the Secretary’s representative), serves as fact finder. However, the provision taken as a whole indicates that it is the Secretary (or the Secretary’s representative) who serves as fact finder. It is the Secretary (or the Secretary’s representative) before whom hearings are held, witnesses testify, and evidence is produced. The court’s involvement is limited to compelling recalcitrant witnesses “to appear before him [the Secretary] or representative designated by him”. The restatement clarifies the generally accepted understanding that the Secretary (or the Secretary’s representative) serves as fact finder (see, e.g., *United States v. Sweet Briar*, 92 F. Supp. 777, 780 (W.D.S.C. 1950) (“the Secretary ‘shall make findings of fact’”); *Ready-Mix Concrete Company v. United States*, 158 F. Supp. 571, 578 (Cl. Ct. 1958) (“the findings of the Department of Labor”)).

#### § 6508. Authority to make exceptions

(a) DUTY OF THE SECRETARY TO MAKE EXCEPTIONS.—When the head of an agency of the United States makes a written finding that the inclusion of representations or stipulations under section 6502 of this title in a proposal or contract will seriously impair the conduct of Federal Government business, the Secretary shall make exceptions, in specific cases or

otherwise, when justice or the public interest will be served.

(b) AUTHORITY OF THE SECRETARY TO MODIFY EXISTING CONTRACTS.—When an agency of the United States and a contractor jointly recommend, the Secretary may modify the terms of an existing contract with respect to minimum wages and maximum hours of labor as the Secretary finds necessary and proper in the public interest or to prevent injustice and undue hardship.

(c) AUTHORITY OF THE SECRETARY TO ALLOW LIMITATIONS, VARIATIONS, TOLERANCES, AND EXEMPTIONS.—The Secretary may provide reasonable limitations and may prescribe regulations to allow reasonable variations, tolerances, and exemptions in the application of this chapter to contractors, including with respect to minimum wages and maximum hours of labor.

(d) RATE OF PAY FOR OVERTIME.—When the Secretary permits an increase in the maximum hours of labor stipulated in a contract, the Secretary shall set a rate of pay for overtime. The overtime rate must be at least one and one-half times the basic hourly rate.

(e) AUTHORITY OF THE PRESIDENT TO SUSPEND.—The President may suspend any of the representations and stipulations contained in section 6502 of this title whenever, in the President’s judgment, suspension is in the public interest.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3810.)

## HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
6508(a) .....	41:40 (1st sentence).	June 30, 1936, ch. 881, § 6, 49 Stat. 2038; June 28, 1940, ch. 440, title I, §13, 54 Stat. 681.
6508(b) .....	41:40 (2d sentence).	
6508(c) .....	41:40 (3d sentence).	
6508(d) .....	41:40 (last sentence less proviso).	
6508(e) .....	41:40 (last sentence proviso).	

In subsection (a), the words “an agency of the United States” are substituted for “the contracting agency or department” for consistency in the chapter. Commas are inserted after “exceptions” and “otherwise” to clarify that the words “when justice or the public interest will be served” apply to exceptions in “specific cases” as well as “otherwise”. The word “thereby” is omitted as unnecessary.

In subsection (b), the words “an agency of the United States” are substituted for “the contracting agency”, and the words “minimum wages” are substituted for “minimum rates of pay”, for consistency in the chapter.

In subsection (c), the word “rules” is omitted as included in “regulations”. The words “as hereinbefore described” are omitted as unnecessary. The words “minimum wages” are substituted for “minimum rates of pay” for consistency in the chapter.

In subsection (d), the words “received by any employee affected” are omitted as unnecessary.

In subsection (e), the words “or all” are omitted as unnecessary.

#### § 6509. Other procedures

(a) APPLICABILITY OF CERTAIN ADMINISTRATIVE PROVISIONS.—Notwithstanding section 553 of title 5, subchapter II of chapter 5 and chapter 7 of title 5 are applicable in the administration of sections 6501 to 6507 and 6511 of this title.