

1994, 108 Stat. 3409, and renumbered by Pub. L. 104-106, div. D, title XLIII, § 4321(f)(1)(B), Feb. 10, 1996, 110 Stat. 675, provided that: "This Act [enacting this section and sections 36 to 45 of this title] may be cited as the 'Walsh-Healey Act'."

EXEMPTIONS TO FEDERAL RESTRICTIONS ON
MARKETABILITY OF PRISON MADE GOODS

Provisions of this section creating exemptions to Federal regulations on marketability of prison made goods are not applicable unless representatives of local union central bodies or similar labor union organizations have been consulted prior to the initiation of any project qualifying of any exemption created by this section and such paid inmate employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services, see section 819(c) of Pub. L. 90-351, set out as a note under section 1761 of Title 18, Crimes and Criminal Procedure.

EXCEPTIONS AND EXEMPTIONS

7 F.R. 9399 (amending Exemption Order Apr. 21, 1942, 7 F.R. 3003), which exempted female persons under 18 years of age from the provisions of subsec. (d) of this section, was superseded by 10 F.R. 10438.

CONTRACTING AUTHORITY OF GOVERNMENT AGENCIES IN
CONNECTION WITH NATIONAL DEFENSE FUNCTIONS

Provisions of sections 35 to 45 of this title as applicable to Government agencies exercising certain contracting authority in connection with national-defense functions, see section 13 of Ex. Ord. No. 10789, set out as a note under section 1431 of Title 50, War and National Defense.

ACT REFERRED TO IN OTHER SECTIONS

The Walsh-Healey Act is referred to in section 356 of this title; title 10 sections 2304, 7299; title 15 section 637; title 29 sections 251 to 256, 258, 259, 262, 653; title 30 section 846; title 39 section 410; title 40 section 329.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36, 37, 38, 39, 40, 41, 42, 43, 43a, 44, 45, 356 of this title; title 10 section 2304; title 15 sections 636, 637; title 25 section 450j; title 39 section 410.

§ 36. Liability for contract breach; cancellation; completion by Government agency; employee's wages

Any breach or violation of any of the representations and stipulations in any contract for the purposes set forth in section 35 of this title 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 such contract, the sum of \$10 per day for each male person under sixteen years of age or each female person under eighteen years of age, or each convict laborer knowingly employed in the performance of such 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 such contract; and, in addition, the agency of the United States entering into such 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 stipula-

tions of said contract set forth in section 35 of this title may be withheld from any amounts due on any such contracts or may be recovered in suits 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 one year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

(June 30, 1936, ch. 881, § 2, 49 Stat. 2037.)

CROSS REFERENCES

Conduct and argument of cases by Attorney General, see section 518 of Title 28, Judiciary and Judicial Procedure.

Power of Solicitor General to assist Attorney General, see section 505 of Title 28.

SECTION REFERRED TO IN OTHER SECTIONS

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

§ 37. Distribution of list of persons breaching contract; future contracts prohibited

The Comptroller General is authorized and directed to distribute a list to all agencies of the United States containing the names of persons or firms found by the Secretary of Labor to have breached any of the agreements or representations required by sections 35 to 45 of this title. Unless the Secretary of Labor otherwise recommends no contracts shall be awarded to such persons or firms or to any firm, corporation, partnership, or association in which such persons or firms have a controlling interest until three years have elapsed from the date the Secretary of Labor determines such breach to have occurred.

(June 30, 1936, ch. 881, § 3, 49 Stat. 2037.)

CROSS REFERENCES

Exemptions and exceptions to section 35 of this title, see note set out under that section.

SECTION REFERRED TO IN OTHER SECTIONS

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

§ 38. Administration of Walsh-Healey provisions; officers and employees; appointment; investigations; rules and regulations

The Secretary of Labor is authorized and directed to administer the provisions of sections 35 to 45 of this title and to utilize such Federal officers and employees and, with the consent of the State, such State and local officers and employees as he may find necessary to assist in the administration of said sections and to prescribe rules and regulations with respect thereto. The Secretary shall appoint, subject to chapter 51 and subchapter III of chapter 53 of title 5, an administrative officer, and such attorneys and ex-

perts, and other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as he may from time to time find necessary for the administration of sections 35 to 45 of this title. The Secretary of Labor or his authorized representatives shall have power to make investigations and findings as provided in sections 35 to 45 of this title, and prosecute any inquiry necessary to his functions in any part of the United States. The Secretary of Labor shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of sections 35 to 45 of this title.

(June 30, 1936, ch. 881, § 4, 49 Stat. 2038; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972.)

CODIFICATION

Provisions of second sentence of this section that authorized the Secretary to appoint an administrative officer and such attorneys and experts "without regard to the provisions of the civil service laws" were omitted as obsolete. Such appointments are subject to the civil service laws unless specifically excepted by such laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5, Government Organization and Employees.

"Chapter 51 and subchapter III of chapter 53 of title 5" substituted in text for "the Classification Act of 1949, as amended" on authority of Pub. L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5.

AMENDMENTS

1949—Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923".

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

TRANSFER OF FUNCTIONS

For transfer of functions of all other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Exemptions and exceptions to section 35 of this title, see note set out under that section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43a, 353 of this title; title 25 section 450j; title 40 section 333.

§ 39. Hearings on Walsh-Healey provisions by Secretary of Labor; witness fees; failure to obey order; punishment

Upon his own motion or on application of any person affected by any ruling of any agency of the United States in relation to any proposal or contract involving any of the provisions of sections 35 to 45 of this title, and on complaint of a breach or violation of any representation or stipulation as provided in said sections, the Secretary of Labor, or an impartial representative

designated by him, shall have the power to hold hearings and to issue orders requiring the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy, failure, or refusal of any person to obey such an order, any District Court of the United States or of any Territory or possession within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person who is guilty of contumacy, failure, or refusal is found, or resides or transacts business, upon the application by the Secretary of Labor or representative designated by him, shall have jurisdiction to issue to such person an order 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; and any failure to obey such order of the court may be punished by said court as a contempt thereof; and shall make findings of fact after notice and hearing, which findings shall be conclusive upon all agencies of the United States, and if supported by the preponderance of the evidence, shall be conclusive in any court of the United States; and the Secretary of Labor or authorized representative shall have the power, and is authorized, to make such decisions, based upon findings of fact, as are deemed to be necessary to enforce the provisions of sections 35 to 45 of this title.

(June 30, 1936, ch. 881, § 5, 49 Stat. 2038; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

CODIFICATION

As originally enacted, the words "or the district court of the United States for the District of Columbia," were set out following "Territory or possession". Act June 25, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia". The words "United States District Court for the District of Columbia" have been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of title 28 which states that "the District of Columbia constitutes one judicial district".

FEDERAL RULES OF CIVIL PROCEDURE

Findings by the Court, see rule 52, Title 28, Appendix, Judiciary and Judicial Procedure.
Subpoena, see rule 45.

FEDERAL RULES OF CRIMINAL PROCEDURE

Contempt, see rule 42, Title 18, Appendix, Crimes and Criminal Procedure.
Subpoena, see rule 17.

CROSS REFERENCES

Criminal contempt, see sections 401, 402, 3285, 3691 of Title 18, Crimes and Criminal Procedure.

Exemptions and exceptions to section 35 of this title, see note set out under that section.

Per diem and mileage of witnesses, see section 1821 of Title 28, Judiciary and Judicial Procedure.